

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NEIL GAIMAN and MARVELS AND
MIRACLES, LLC.,

Plaintiffs,

-vs-

TODD MCFARLANE, TODD MCFARLANE
PRODUCTIONS, INC., TMP INTER-
NATIONAL, INC., MCFARLANE
WORLDWIDE, INC. and IMAGE
COMICS, INC.,

Defendants.

03-1461

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U.S. DISTRICT COURT
WEST. DIST. OF WISCONSIN

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CASE
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30(b)(6) DEPOSITION OF TODD MCFARLANE PRODUCTIONS, INC.
AND DEPOSITION OF TODD D.M. MCFARLANE

Volume 2
(Pages 133 - 256.)

Phoenix, Arizona
June 20, 2002
8:55 a.m.

Prepared for:

U.S. DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
(Original)

Reported by:

PAUL GROSSMAN
AZ CCR #50028
CA CSR #1487

U.S.C.A. 7th Circuit
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2
3 THE CONTINUED DEPOSITION OF TODD D.M. McFARLANE,
4 taken at 8:55 a.m. on June 20, 2002, at the offices of
5 Brown & Toleu, Ltd., 101 West Adams Street, Phoenix,
6 Arizona, before PAUL GROSSMAN, a Notary Public and
7 Certified Court Reporter #50028 in and for the State of
8 Arizona, pursuant to the Federal Rules of Civil
9 Procedure.

10 The plaintiffs were represented by their
11 attorneys, Foley & Lardner, by Allen A. Arntsen, Esq.
12 and Jeffrey A. Simmons, Esq.

13 The defendants Todd McFarlane were
14 represented by their attorneys, Blackwell, Sanders,
15 Peper, Martin, L.L.P., by Michael A. Kahn, Esq.

16 The defendant Image Comics was represented by
17 its attorneys, Brobeck, Phleger & Harrison, LLP, by
18 Matthew C. Lapple, Esq.

19 Also present was Kenneth F. Levin, Esq.,
20 Mr. Neil Gaiman.

21
22
23
24
25

Phoenix, Arizona

June 20, 2002

8:55 a.m.

TODD D.M. McFARLANE,
called as a witness herein, having been previously duly
sworn, was examined and testified as follows:

EXAMINATION

BY MR. ARNTSEN:

Q. Mr. McFarlane, you're aware you're still
under oath?

A. Yes.

Q. By the way, have you ever had your deposition
taken before?

A. Yes.

Q. On how many occasions?

A. I think twice.

Q. In what context?

A. One was up in Canada in a -- a lawyer billing
dispute and the other was a few years back in another
suit that was brought against me.

Q. Is that the Tony Twist suit?

A. Correct.

1 Q. Did you ever testify in court before?

2 A. Yes.

3 Q. How many occasions?

4 A. Once.

5 Q. Was that in the Tony Twist suit?

6 A. Yes.

7 Q. By the way, I didn't -- I said this
8 yesterday, but you understand if you don't understand a
9 question tell me and I'll rephrase it. Do you
10 understand that?

11 A. Okay.

12 Q. And also during your testimony if something
13 comes to mind or if, for instance, something came to
14 mind that, you know, a previous answer you have given is
15 incomplete or inaccurate, you should feel free to jump
16 in to correct or supplement the record. Okay?

17 A. Yes.

18 Q. Image Comics, what percentage of Image do you
19 own?

20 A. Today? As a shareholder, one-fourth.

21 Q. And so did you -- was ownership interest
22 always or your pro rata share depending on the number of
23 shareholders?

24 A. Right.

25 Q. Are you the president of Image?

1 A. Right.

2 Q. And are there any contracts in place between
3 Image and yourself or any of the other entities that you
4 own?

5 MR. KAHN: Keep in mind there's written
6 contracts and there's oral contracts and Allen's
7 question will include both.

8 THE WITNESS: I can't -- I can't -- I can't
9 speak for everybody, no. I don't know.

10 BY MR. ARNTSEN:

11 Q. Are there any contracts in place between you
12 individually and Image?

13 A. Not written.

14 Q. Are there any oral contracts in place?

15 A. Yeah.

16 Q. And what are they?

17 A. That if I publish comic books that I will run
18 them through the entity called Image comic books.

19 Q. So Image has a sort of right of first refusal
20 on your comic books, is that right?

21 A. Yes, something like that.

22 Q. And then what are the terms of the contract?

23 A. That Image would do some of the leg work,
24 solicitations, accounting, collecting bills, dealing
25 with the printers, placing ads at times, sometimes

1 helping you with your letter columns and collecting the
2 bills, paying some of those bills and then passing it on
3 to the individual person who had given them the comic
4 book.

5 Q. So this contract you talked about applies to
6 if Image is publishing a comic book that you create,
7 correct?

8 A. Right.

9 Q. Are there any other contracts between you and
10 Image?

11 A. Image solicits the toys that come from
12 McFarlane Toys, so besides distributing those nationwide
13 we also run ads in the Diamond Catalog that Image comic
14 book puts in the Diamond Catalog.

15 Q. And does McFarlane Toys pay Image for that?

16 A. Again, it's not a -- we don't pay. The way
17 that it works is that Image deducts and then gives out,
18 so there's -- there's rarely ever a time somebody is
19 given. They sort of take theirs and then pass it on to
20 the individuals after that.

21 Q. Any other contracts between you and Image?

22 A. No. I think that's pretty much it.

23 Q. Are you aware of any contracts between any
24 other entities that you own and Image?

25 A. No.

1 Q. And do you receive any compensation from
2 Image other than the licensor -- no, strike that.

3 What compensation do you receive from Image?

4 A. I don't know if we do. I think we have an
5 accrual at the end of the year, but it's really based on
6 sort of back stock sold. So I think if there's any
7 profits made, then I think they usually divide it
8 amongst the number of shareholders. So if there's a
9 profit, I'd get whatever fraction of the shareholder I
10 was at that point.

11 Q. Okay. Mr. McFarlane, you were just
12 discussing a couple of agreements between you and Image,
13 one related to publishing comic books and the other
14 related to placing ads for toys. Was that contract
15 between you as an individual and Image or between one of
16 your entities?

17 A. Between my entities. The comic books would
18 be Todd McFarlane Productions and Image and the toys
19 would be McFarlane Toys and Image.

20 Q. Thank you.

21 MR. KAHN: Just for clarity, but if there's
22 money left over at the end of the year the profits from
23 that goes to you as a shareholder?

24 THE WITNESS: Right. A shareholder of Image
25 Comics.

1 BY MR. ARNTSEN:

2 Q. You as an individual are a shareholder of
3 Image and receive whatever kind of dividends or
4 compensation would accrue from that as an individual,
5 correct?

6 A. Yes.

7 Q. Now we're going to start going through some
8 documents and really what I'm going to be doing here,
9 Mr. McFarlane, is sort of going back through the
10 chronology of your relationship with Mr. Gaiman, which
11 we pretty well covered -- which we went through
12 yesterday, but now just in the context of some of the
13 documents that were -- that were drafted on that.

14 Can you identify what was previously marked
15 as Exhibit 12?

16 MR. KAHN: Do you want him to tell you what
17 it is?

18 MR. ARNTSEN: Yes. He doesn't necessarily --
19 I'm not going to ask him in detail, you know, about word
20 for word what it is. If he can tell us what it is.

21 THE WITNESS: It appears to be the script
22 that Neil wrote for Issue 9.

23 It also appears to not be the complete
24 script, though. It looks like it ends on page 15 and it
25 would have been probably a 22 page comic.

1 BY MR. ARNTSEN:

2 Q. Okay. So --

3 A. So a partial script it looks like.

4 Q. Of Issue 9?

5 A. Yes.

6 Q. Okay. And do you recall whether you made any
7 editorial changes to that script as submitted to you by
8 Neil?

9 A. No.

10 Q. No, you don't recall or no, you did not?

11 A. No, I don't recall.

12 MR. ARNTSEN: All right. Mark this.

13 (Deposition Exhibit Number 34 was then
14 marked for identification.)

15 BY MR. ARNTSEN:

16 Q. Can you identify Exhibit 34?

17 A. Neil, as I said earlier, used to write full
18 scripts and then he would sometimes put thumbnails with
19 it. I think these are the thumbnails that went with
20 that partial script that you had shown me.

21 Q. For Spawn Issue 9?

22 A. For Spawn 9, right.

23 Q. And do you recall when these were forwarded
24 to you in connection with the process of creating Spawn
25 Issue 9?

1 A. I don't understand the question.

2 Q. Did these accompany the script that Neil sent
3 to you?

4 A. I don't recall, but I would assume yes.

5 Q. And did Neil send this to you before you
6 embarked on the art work for Spawn Issue 9?

7 A. No. I did the cover and then -- because we
8 have to get a cover out first for solicitation, so we
9 did the cover with the character on the -- on the front
10 and then eventually we had to get the writing, actually
11 putting the book together.

12 You can solicit, but at some point you have
13 to actually do the book, so this -- this comes after
14 putting out the cover. So, in beginning the process of
15 putting the insides together.

16 Q. So you got Exhibit 34 after you had drawn the
17 cover, but before you started drawing the insides of the
18 book, is that correct?

19 A. Yes.

20 Q. And what use did you make of these thumbnail
21 sketches?

22 A. Usually when writers do this they are looking
23 for a pacing. You know, they are looking to sort of
24 say, "Here's sort of the pacing that we have of the
25 book." So you sort of look at it and most of the

1 writers that do that just go, you know, "Do whatever you
2 want with it," you know. "If you like what I got there
3 fine, if you don't change it."

4 Just it's, you know, you're the artist and
5 I'm the writer and so you look at it and if anything
6 sort of triggers an idea then you sort of move forward
7 and if you don't, you sort of walk away from it. You
8 modify. You are always modifying it.

9 Q. So you have it as a reference point to use
10 more or less as you choose as the artist, is that
11 essentially it?

12 A. Right.

13 (Deposition Exhibit Number 35 was then
14 marked for identification.)

15 BY MR. ARNTSEN:

16 Q. Identify Exhibit 35, please. Do you know
17 what Exhibit 35 is?

18 A. Not really.

19 Q. Have you seen it before?

20 A. No.

21 Q. Do you recognize it as a copyright
22 application for Spawn Issue 9?

23 A. Yes, it looks like it.

24 Q. And you're the copyright claimant, correct?

25 A. No. It should be Todd McFarlane Productions.

1 Q. But looking down at item 4 on the first page
2 it says it's Todd Dean McFarlane, correct?

3 A. That's what it says, right.

4 Q. And up under item 2, do you see the name of
5 author? That's Todd Dean McFarlane, correct?

6 A. Right.

7 Q. And it's got your year of birth, correct?

8 A. Right.

9 Q. And you indicate -- you checked "yes" where
10 it says "Was this contribution to the work a 'work made
11 for hire,'" correct?

12 A. I don't believe I show this on --

13 Q. You what?

14 A. I don't believe I filled this in.

15 Q. Did you authorize someone to fill this out on
16 your behalf?

17 A. Yep. That looks like Beth.

18 Q. And who's Beth?

19 A. She used to work for me years ago.

20 Q. And what did she do for you?

21 A. She was an assistant to one of the presidents
22 at the toy company.

23 Q. Who?

24 A. Paul Burke.

25 Q. Okay. And she was your authorized agent,

1 correct?

2 A. It appears.

3 Q. And it states here that -- under item 2 you
4 state that you are the creator. It states that you're
5 the creator of the text and art work, correct?

6 A. Where am I looking?

7 Q. Nature of Authorship, item 2 a.

8 A. What did you want me to look at?

9 MR. KAHN: It says "Work for Hire" and then
10 "Nature of Authorship."

11 THE WITNESS: Oh, I see.

12 BY MR. ARNTSEN:

13 Q. Is that correct?

14 A. Right.

15 Q. But you weren't the creator of the text of
16 Spawn Issue 9, were you?

17 A. No.

18 Q. Neil was, right?

19 A. Right.

20 Q. Do you know -- do you recall the process that
21 caused you to apply for a copyright for Spawn Issue 9 in
22 April of 1996?

23 A. No. It probably wouldn't have been about
24 Issue Number 9. It would have been the comic books as a
25 whole.

1 Q. So you recall applying for a number of
2 copyrights for previous comic books in 1996?

3 A. I don't recall the date specifically.

4 Q. No, but generally. I guess what I'm
5 wondering about is what caused you to apply for a
6 copyright approximately three years after the issue came
7 out?

8 A. Probably I started having more lawyers
9 hanging around me, so --

10 Q. Do you have any recollection in that regard
11 or is that --

12 A. That's probably the closest thing to the
13 truth, so --

14 Q. But do you recall that?

15 A. I don't recall.

16 Q. Okay. Do you recall addressing the issue of
17 why you did not list Neil as the author of the text of
18 Spawn Issue 9?

19 A. No.

20 Q. And do you know why it is that you're listed
21 individually as the copyright claimant instead of Todd
22 McFarlane Productions?

23 A. No.

24 (Deposition Exhibit Number 36 was then
25 marked for identification.)

1 BY MR. ARNTSEN:

2 Q. Take a look at Exhibit 36. Can you identify
3 what Exhibit 36 is?

4 A. Yes. It looks like the -- the -- some of the
5 script for a couple pages from Spawn Issue 26.

6 Q. And this was written by Neil?

7 A. Right.

8 Q. And did you make any changes to this portion
9 of the script before incorporating it into Spawn Issue
10 26?

11 A. I don't recall.

12 MR. ARNTSEN: Mark this.

13 (Deposition Exhibit Number 37 was then
14 marked for identification.)

15 BY MR. ARNTSEN:

16 Q. Take a look at Exhibit 37, please.

17 A. Okay.

18 Q. Can you identify what Exhibit 37 is?

19 A. What I think it is or -- or --

20 Q. Yes. Have you seen it before?

21 A. No.

22 Q. Do you see that it purports to be a
23 Certificate of Registration for a copyright for Spawn
24 Issue 26?

25 A. Right.

1 Q. And you are listed as the author, correct?

2 A. Right.

3 Q. And you are listed as the copyright claimant,
4 correct?

5 A. Right.

6 Q. And it's dated January 20, 1995, correct?

7 A. Right.

8 Q. Does this at all refresh your recollection as
9 to why you would have applied for a copyright for Spawn
10 Issue 26 fifteen months before applying for a copyright
11 on Spawn Issue 9?

12 A. No.

13 Q. And it lists you as the author of the text of
14 Spawn Issue 26, correct?

15 A. What am I looking for?

16 Q. 2 a.

17 A. Right.

18 Q. And were you the author of the text of Spawn
19 Issue 26?

20 A. Most of it.

21 Q. Was Neil Gaiman the author of the remaining
22 portion of the text of Spawn Issue 26?

23 A. Right.

24 Q. Why didn't you list him here as a co-author?

25 A. I don't know. I didn't fill that out.

1 Q. Beth did again?

2 A. Right.

3 Q. And again the copyright is claimed for you as
4 an individual, correct?

5 A. That's what it says.

6 Q. Do you have any recollection of the process
7 of filling out and submitting these copyright
8 registrations?

9 A. No.

10 MR. ARNTSEN: Mark this.

11 (Deposition Exhibit Number 38 was then
12 marked for identification.)

13 BY MR. ARNTSEN:

14 Q. Take a look through Exhibit 38, please. Can
15 you identify what Exhibit 38 is?

16 A. It appears to be checks sent to Neil Gaiman.

17 Q. From whom or what?

18 A. From Todd McFarlane Productions.

19 Q. Do you recall what you paid Neil for his
20 contribution to the script of Spawn 26?

21 A. Probably not exactly, but it was probably
22 around a thousand a page or something.

23 Q. Yes. Do you recall how you would have come
24 up with the calculation of what to pay?

25 A. Not really. I can -- again, Neil said he'd

1 write them for free, he didn't want to be paid. So I
2 didn't think that would be fair. So I wanted to get him
3 some money. So I don't know if it was based on anything
4 other than wanting to give him some money for his
5 effort.

6 Q. Can you take a look at page number 347. Do
7 you see the check, the check number 1145, the bottom
8 half of that check where in the memo line it says
9 "Angela Intro"?

10 A. Okay.

11 Q. Does that represent the payment for this
12 portion of the script of Spawn 26?

13 A. It's possible, yes.

14 Q. Do you have any recollection in that regard?

15 A. No. I'd have to see if there was any
16 paperwork that accompanied that check.

17 Q. And do you have -- does this help refresh --
18 just assume for the moment that this is the payment for
19 that.

20 A. Okay.

21 Q. It was \$3,300.

22 A. Okay.

23 Q. Does that refresh your recollection as to how
24 you came up with that number?

25 A. No. I'm -- it probably wasn't based on any

1 formula. He did some work and I wanted to make sure he
2 got paid, so --

3 Q. It was just essentially a number you thought
4 was fair?

5 A. Right.

6 Q. Do you recall whether you made any other
7 payments to Neil for the script for Spawn 26?

8 A. I don't recall.

9 Q. I'll show you what was previously marked
10 Exhibit 14. Mr. McFarlane, is that in your handwriting?

11 A. No.

12 Q. Do you recognize it as Terry Fitzgerald's
13 handwriting?

14 A. I think so.

15 Q. And did you sign it or -- do you see where
16 it's signed "Todd and Terry"?

17 A. Right.

18 Q. Did you sign that or did he just send a note
19 on behalf of both of you?

20 A. Yeah.

21 Q. The latter?

22 A. Yeah. It's all in his handwriting.

23 Q. And what does this relate to?

24 A. I think this is in reference to the Angela
25 mini series.

1 MR. ARNTSEN: Mark that.

2 (Deposition Exhibit Number 39 was then
3 marked for identification.)

4 BY MR. ARNTSEN:

5 Q. Take a look at Exhibit 39, please.

6 (Deposition Exhibits Numbers 40 through 44,
7 inclusive, were then marked for
8 identification.)

9 BY MR. ARNTSEN:

10 Q. Can you take a look at Exhibits 39, 40 and
11 41. Can you identify what Exhibits 39, 40 and 41 are?

12 A. 39 looks like the script to Angela mini
13 series Issue 1.

14 Exhibit 40 looks like the script for the
15 Angela mini series Issue 2.

16 And Exhibit 41 looks like -- there's no page
17 numbers on it -- either a partial or a complete script
18 for Angela mini series Issue Number 3.

19 Q. And who wrote those scripts?

20 A. Neil did.

21 Q. Did you make any edits to those scripts?

22 A. I don't recall.

23 Q. Are you aware of anyone at Image making any
24 edits to those scripts?

25 A. No, nobody else would have been authorized

1 to.

2 Q. Okay. So if anyone would have, you would
3 have and you don't recall, is that correct?

4 A. Correct.

5 Q. And can you identify what Exhibits 42, 43 and
6 44 are?

7 Mark that.

8 (Deposition Exhibit Number 45 was then
9 marked for identification.)

10 BY MR. ARNTSEN:

11 Q. Can you identify what Exhibits 42, 43 and 44
12 are?

13 A. They appear to be thumbnail sketches for --
14 Exhibit 42 -- although I can't be sure, but it says for
15 the Angela mini series Issue Number 1.

16 Exhibit 44 appears to be thumbnails that may
17 have been done for Angela mini series -- I guess it says
18 Number 3 here.

19 And Exhibit 43, although we got a duplication
20 in here. We -- we -- it's done twice here, the
21 duplication, but minus that it appears to be thumbnails
22 that may -- may have accompanied some of the work done
23 on Angela mini series Number 2.

24 Q. And do you know who drew those thumbnail
25 sketches?

1 A. I believe Neil did.

2 Q. And did you receive these thumbnail sketches
3 in connection with the development of the Angela comics?

4 A. I don't recall.

5 Q. Would they have come to you?

6 A. I don't know.

7 Q. Did you have any involvement in the art work
8 for the Angela mini series?

9 A. I wasn't the artist on that book, unlike
10 Issue 9. Greg Capullo was the actual artist.

11 Q. So, did you have any involvement in the art
12 work?

13 A. Just in my conversations with -- talking Greg
14 through some of his problems if he had any or what he
15 wanted me to have in it visually.

16 Q. And do you have any recollection of receiving
17 these thumbnail sketches?

18 A. No.

19 Q. Take a look at Exhibit 45. And I'll
20 represent to you that Exhibit 45 is comprised of three
21 copyright registrations.

22 A. Okay.

23 Q. Do you recognize Exhibit 45 as copyright
24 registrations for Angela 1, 2 and 3?

25 A. I don't understand the question.

1 Q. What do you understand Exhibit 45 to be?

2 A. They appear to be Certificates of
3 Registration.

4 Q. For Angela 1, 2 and 3?

5 A. Right.

6 Q. And you are listed as the copyright claimant
7 for those works, correct?

8 A. Right.

9 Q. And you are listed as the creator of the text
10 and art work for those works, correct?

11 A. Where am I looking there again?

12 Q. 2 a, Nature of Authorship.

13 A. Right.

14 Q. And you weren't the creator of the text or
15 the art work for those works, were you?

16 A. Right.

17 Q. Did you ever tell Neil that you were applying
18 for a copyright for Angela 1, 2 and 3?

19 A. I don't recall.

20 Q. Do you recall what you paid Neil for his work
21 for Angela 1, 2 and 3?

22 A. No.

23 Q. I'll show you a document that was previously
24 marked Exhibit 9 and I wonder whether that would refresh
25 your recollection at all.

1 Now, I'll also show you a document previously
2 marked Exhibit 38 and I'll call your attention to pages
3 345 and 346 and see if that refreshes your recollection
4 at all.

5 A. So -- so, what's the question?

6 Q. Do you have any recollection as to what you
7 paid Neil for his work on Angela and on the Angela mini
8 series? And then the second, if you do, how you kept --
9 how you determined how much to pay him?

10 A. No. It looks like we paid him some advances.
11 Round numbers were usually advances.

12 Q. Those would be the \$10,000 payments?

13 A. Right.

14 And then the other ones, I don't know how we
15 derived those calculations off the top of my head.

16 Q. Do you have any recollection of that at all
17 as to how you came up with those calculations?

18 A. It -- no.

19 Q. For instance, was it a percentage royalty, do
20 you know that, or do you just have no recollection?

21 A. I don't have a recollection. But again
22 most -- most things are percentages, so again I don't
23 know what formula we got to that percentage.

24 Q. But it would be some percentage of sales?

25 A. I don't know. Percentage of something.

1 Q. Okay. And the percentage of something, that
2 would in some way be tied to the sales, correct?

3 A. I can't say it. A percentage of something.

4 Q. What kinds of things might it be --

5 A. I don't know.

6 Q. -- other than something tied to sales?

7 A. It could be -- it could be print runs. It
8 doesn't necessarily mean that you sell everything. It
9 could be just a percentage of a cover price. It could
10 be a percentage of other things. So I don't know what
11 formula we actually used in this case.

12 Q. Did you and Neil ever discuss what -- how
13 Neil would be paid for the Angela mini series?

14 A. I don't recall specifically about it, but
15 again I think that we were in the beginnings of the
16 conversations of trying to do some of the stuff that he
17 was getting at DC Comics.

18 Q. And do you recall any specific discussions in
19 that regard?

20 A. No.

21 Q. Would you have been the person who Neil would
22 have had those discussions with or would someone else on
23 your behalf?

24 A. It's possible he could have talked to others.

25 Q. Who would it have been?

1 A. Terry. He might have. And if I was busy on
2 the phone he might have talked to Terry. I think Julia
3 Simmons was working for me at that time. He might have
4 talked to her. But you'd have to ask them.

5 Q. Terry Fitzgerald?

6 A. Right.

7 (Whereupon, a short recess was then had at
8 9:38 a.m. until 9:47 p.m.)

9 (Deposition Exhibit Number 46 was then
10 marked for identification.)

11 BY MR. ARNTSEN:

12 Q. Now I'm shifting gears and talking about
13 this, the sort of dispute resolution process that you
14 and Neil went through in 1996 and 1997.

15 First of all, do you recall Neil coming out
16 to your house in Phoenix in the summer of 1996 to try to
17 work out an agreement with you?

18 A. I don't recall the date. I know that Neil
19 came out to the house once.

20 Q. At kind of sort of early on in this process?

21 A. Well, during this process some time, yes.

22 Q. What do you recall about that?

23 A. That he -- that he came to my house, came up
24 to my office. I've got an office in the house. I
25 believe Larry Marder was there. And again I think that,

1 you know, we exchanged pleasantries, brought each other
2 up to date on some things we were doing.

3 He had, I think, a short clip from some work
4 he was doing for the BBC that he wanted to show, that he
5 was proud of.

6 And then I think I indicated to Larry at some
7 point that -- that Mark Silvestre, one of the Image
8 partners, Larry was the head of Image at that point, had
9 quit, and then I don't recall if Larry stayed or what
10 he -- whether he didn't stay or what he did with the
11 news, and then Neil and I probably went and had some
12 conversations again trying to see if there was any
13 common ground on moving all this forward.

14 Q. Do you recall that conversation with you and
15 Neil at this time?

16 A. Not specifically.

17 Q. Generally what's your recollection of it?

18 A. That we were having conversations, ongoing
19 conversations, to try to move all this forward to get on
20 with our lives.

21 Q. When had been the most -- prior to this
22 meeting at your house how long had it been since you'd
23 seen Neil in person approximately? I'm just trying to
24 get a sense of the frequency of in-person meetings.

25 A. I don't think there were that many. Maybe

1 once a year, once every two years or something like
2 that.

3 Q. And have we exhausted your recollection of
4 that conversation at your house?

5 A. Correct.

6 Q. Take a look at Exhibit 46. Do you recall
7 getting this?

8 A. No, I don't recall this.

9 Q. Do you recall any discussions with Merrilee
10 Heifetz with respect to payments to Neil around this
11 time?

12 A. No.

13 Q. Do you recall getting Exhibit 45?

14 A. No.

15 Q. I'll show you what was marked yesterday as
16 Exhibit 25. Have you seen that before?

17 A. I don't recall.

18 Q. Do you see it indicates that -- Exhibit 25
19 indicates that it had some pages of DC contracts
20 attached to it? Do you see that?

21 A. Oh, in the first sentence you mean?

22 Q. Yes.

23 A. Yeah, it indicates something like that,
24 right.

25 Q. Do you recall ever seeing those contract

1 excerpts?

2 A. I don't recall.

3 Q. Do you ever recall ever seeing any of Neil's
4 contracts with DC Comics?

5 A. I recall seeing maybe a page or two of -- of
6 some royalty formulas with sort of blocking-outs above
7 and below, so, you know, maybe a page or two of limited
8 information during this whole process.

9 Q. Okay. But that's all?

10 A. Right.

11 Q. I'll show you what's been previously marked
12 Exhibit 27. Do you recall seeing Exhibit 27?

13 A. Not specifically.

14 Q. Generally?

15 A. Generally, uh-huh.

16 Q. Okay. What do you recall about it?

17 A. I think this is the part of the relationship
18 where Larry was in the middle trying to mediate, if you
19 will, a little bit of it and I think that part of his
20 task was again to try and see what both parties were
21 agreeable upon and what -- what they were disagreeing
22 upon and then trying to gather information on what would
23 sort of soothe both sides.

24 It appears that is Larry's attempt to find
25 some of that information out from Neil's end and then

1 possibly pass it on to me.

2 Q. Do you recall getting that information from
3 Larry?

4 A. Not specifically, but he sent it to me
5 because I probably did.

6 Q. But you have no independent recollection of
7 your consideration of that information in Exhibit 27?

8 A. If I got this, I would have -- I would have
9 either had a follow-up oral conversation with him or
10 made some notes on this concerning some of the
11 information that we have in here, so --

12 Q. So, do you believe that there is a copy of
13 this document somewhere that has your notes on it?

14 A. It's possible.

15 Q. Do you recall seeing any such annotated copy
16 of this document?

17 A. I don't recall.

18 Q. Okay. So, is what you're saying you don't
19 know if you put notes on a copy of this document but
20 that that's your standard practice? Is that what you're
21 saying?

22 A. Yeah. Again I don't type much, you know, so
23 I'm sort of slow at typing, so usually what I'll do --
24 and I don't write a lot of memos either, so what I
25 usually do is when I get information to me I usually

1 scribble on what people are presenting to me and then I
2 use that as a follow-up to a conversation that I'll
3 usually have back saying, you know, "Look at point 2.
4 I've got a question about point 2," so --

5 Q. And you don't recall whether you did that
6 with regard to Exhibit 27 or not?

7 A. Yeah. I don't know. If Larry had given this
8 to me, then I would have -- I would have at least looked
9 at it. I don't know what the complete follow-up to it
10 was, but I would have looked at it.

11 Q. And do you know whether you would have jotted
12 notes on your copy of it?

13 A. It's possible. I mean, if I had -- I either
14 would have jotted notes or any clarity or I would have
15 verbalized those questions to get clarity.

16 Q. Okay. Do you have any recollection of that
17 at all with regard to this document?

18 A. Not specifically how I did it one way or the
19 other.

20 Q. Do you recall doing it one way or the other?

21 A. No.

22 Q. Exhibit 26, do you recall getting that?

23 A. No.

24 Q. Exhibit 29, take a look at that for a minute.
25 Do you see Exhibit 29 appears to be a FAX to

1 Neil from Larry Marder?

2 A. Right.

3 Q. Dated December 17, 1996?

4 A. Right.

5 Q. And it says, "Enclosed is TMP's offer
6 regarding royalties for Angela, Medieval Spawn and
7 Cogliostro," correct?

8 A. Right.

9 Q. Do you recognize that that is what this is?

10 A. Right.

11 Q. Okay. Describe the process that resulted in
12 your coming up with this offer?

13 A. I don't recall the specifics, but we were
14 exchanging information back and forth, so this appears
15 to be either an offer or -- or potentially a
16 counter-offer to the ongoing conversations that we were
17 having.

18 Q. Did these different percentages here, did you
19 come up with those?

20 A. I would have based on the information that
21 would have been given back to me.

22 Q. From whom?

23 A. From Larry and -- and Neil through the
24 process. I wasn't working independent through all this.

25 Q. And what information went into your coming up

1 with this offer? How did you come up with it?

2 A. I don't know. It may be looking at some of
3 the information that Neil had passed on either himself
4 or through Larry and then trying to come up with numbers
5 that would make sense in the context of getting to the
6 point that we wanted to, which was to try and get that
7 DC contract.

8 Q. Okay. Well, first of all, you see how your
9 counter-offer is organized by character?

10 A. Right.

11 Q. And the percentages for the Angela character
12 are five times the percentages for the Medieval Spawn
13 and Cogliostro characters, correct?

14 A. Correct.

15 Q. Do you recall making that decision or coming
16 up with that relationship?

17 A. Only -- only that, again going to what I
18 mentioned yesterday, that I felt that Medieval Spawn and
19 Cogliostro were essentially my characters and that
20 Angela I understood the effort that we both put into it,
21 so I gave her a lot more weight in what I was willing to
22 pay than I did those other two characters.

23 Q. Okay. And looking at Exhibit 29, it talks in
24 terms of percentages of net.

25 A. Right.

1 Q. What is net?

2 A. Well, in this case it would depend upon sort
3 of the end result of what Todd McFarlane Productions had
4 done, so --

5 Q. So what you were saying, for instance, for
6 Angela comic books you were proposing that you would pay
7 Neil 10 percent of what Todd McFarlane Productions
8 received?

9 A. Right.

10 Q. And for comic books Todd McFarlane
11 Productions would receive money from Image under the
12 process you had discussed earlier, correct?

13 A. Right.

14 Q. Okay. And then for licensing for foreign
15 comics, that would be again what Todd McFarlane
16 Productions would get?

17 A. Right.

18 Q. And what was the -- who would pay Todd
19 McFarlane Productions for foreign comics?

20 A. It would be the various international comic
21 book distributors around the world.

22 Q. Such as? Just give me an example.

23 A. Well, I think we had one in Italy and one in
24 Japan, I mean, so we would have various contracts with
25 various people for different -- each language was

1 usually a different contract, so -- and then they would
2 give you money.

3 Q. And the money would come -- I mean, these
4 were companies that weren't affiliated with you?

5 A. Right.

6 Q. Okay. And so they would pay -- these are
7 distributors, publishers? What are they?

8 A. Yes. Some of them were both. You know,
9 again each guy sort of had his own business. Some were
10 strictly publishers and some did a little bit of both.

11 Q. And did TMP Asia or TMP Europe have anything
12 to do with publishing or comics or was that just toys?

13 A. Just toys.

14 Q. And then foreign trade paperbacks the same
15 thing?

16 A. Right.

17 Q. Did Todd McFarlane Productions have standard
18 contracts with foreign companies as to what you would,
19 you know, kind of what your share would be, how that
20 worked?

21 You described how the Image contract worked
22 for domestic companies. How did it work for foreign
23 companies?

24 A. I don't know there was a standard. I think
25 each country potentially had a standard, but you

1 couldn't match them all together. You couldn't say
2 Spain was Japan because again depending upon, I believe,
3 the sort of the need for American comic books depended
4 upon what they were willing to give and the sales that
5 they were projecting, so each one was pretty much
6 individual.

7 Q. Okay. And then movies, audio and stage, 5
8 percent of net. What's the net there?

9 A. Well, again it would be some calculation of
10 what Todd McFarlane Productions received.

11 Q. And how does what Todd McFarlane -- I mean, I
12 thought it was Todd McFarlane Entertainment that did
13 that kind of thing.

14 A. No. Todd McFarlane Entertainment didn't come
15 into existence until like around '98 or '99 officially,
16 so --

17 Q. So, as of the end of 1996 what were the kinds
18 of income that Todd McFarlane Productions were receiving
19 from movies, audio or stage?

20 A. In what year?

21 Q. At the time of Exhibit 29, the end of '96.

22 A. Nominal at best. Maybe even none.

23 Q. Retail products includes toys. What does net
24 mean there?

25 A. Whatever formula we agreed to of what Todd

1 McFarlane Productions ended up with.

2 Q. And we testified earlier as to your various
3 toy companies. There are a number of them, correct?

4 A. Right.

5 Q. And how does -- how does income they receive
6 from the sale of toys come back to Todd McFarlane
7 Productions?

8 A. If it's based on ideas that Todd McFarlane
9 Productions is licensing out, then we pay a royalty
10 percentage, it looks like, just like we do with all the
11 other ones.

12 So, if it was, for instance, if we do
13 baseball toys we have to give royalties to the baseball
14 players. If we do a movie, Austin Powers, we owe money
15 to the company that owns Austin Powers. If we do Spawn,
16 we owe money to the company that owns Spawn. That would
17 be Todd McFarlane Productions. So we pay a percentage
18 to Todd McFarlane Productions.

19 Q. So that would be the case for Spawn, Angela
20 and Cogliostro? So, how was that calculated?

21 A. I think generally it was around 5 percent.

22 Q. Five percent of?

23 A. Five percent of the wholesale price that we
24 sold to our vendor.

25 Q. Okay. So that would go to Todd McFarlane

1 Productions. And for the Angela toys you were proposing
2 that Neil accept 10 percent of that 5 percent, correct?

3 Bottom of the first page.

4 A. Right.

5 Q. Okay. Or half of one percent, correct?

6 A. Correct.

7 Q. Cards. Was that Todd McFarlane Productions?

8 A. Right.

9 Q. And so is the net with reference to Todd
10 McFarlane Productions, how did payments for cards work
11 with Todd McFarlane Productions?

12 A. The same as everything else. So again I
13 believe that the -- eventually we did cards. I don't
14 know if they are out there or whatever, but another
15 outside company did it and then money would eventually
16 be given to me, Todd McFarlane Productions.

17 Q. And so let me just understand hypothetically.
18 You had some cards and they would have a number of
19 characters on them and let's say one of the characters
20 was Angela. How would -- just as a practical matter
21 assume that this was the agreement in place. How would
22 the 10 percent to Neil be calculated?

23 A. Well, given we haven't defined all the
24 specifics, but let's use generalities here. We'll just
25 use round numbers to sort of make it easy for everybody.

1 If there were a hundred cards in a set and
2 let's say one card out of the hundred contained Angela,
3 that would mean that she is 1/100.

4 If I received as Todd McFarlane Productions
5 \$100, then I would say, "Hey, I got -- I got -- I got
6 \$100 but Angela is at this point 1/100 of that." And so
7 again at that point actually in that case I'd probably
8 have just split that one dollar in half, half to Todd
9 and half to Neil.

10 Q. So a 50 percent of net as opposed to a 10
11 percent of net?

12 A. Well, in that specific case because there's a
13 fraction.

14 Again there's no definitions as to net. We
15 didn't get that far as to defining and clarifying how we
16 would actually define the net. You can actually sub
17 break net up into a lot of areas depending upon whether
18 it's an inclusive of one character or whether it's a
19 multitude of characters. We never got that far.

20 Q. Well, again this is your proposal, right?

21 A. Right.

22 Q. And it was you telling -- and you dictated
23 this to Mr. Marder, correct?

24 A. Or over the phone, right.

25 Q. And so -- so -- but what you're saying is at

1 the time you did this you were proposing these
2 calculations in terms of net, but you hadn't nailed down
3 in your own mind what you were meaning by net?

4 A. Right.

5 Well, what I wanted to do hopefully is to --
6 is to have a dialogue eventually with Neil that we could
7 actually agree what net is.

8 Net is a very ambiguous word, as you may or
9 may not know, in any field. And so it shouldn't
10 necessarily be a one-sided conversation. So both
11 parties should agree what net is eventually.

12 Q. And what Exhibit 30 was is essentially a
13 counter-offer to Neil's proposal which had been in some
14 of the prior exhibits?

15 A. Right.

16 And again just to sort of add a little bit,
17 some of the reason for nets, too, is that there is
18 always I think confusion that Todd McFarlane Productions
19 and Image comic books weren't the same entity. And so
20 because Image comic books gathered all the money didn't
21 necessarily mean that's what the money was, where in the
22 case of the DC contract, DC gathers it and like there is
23 no middle man for DC comic books. So this is making
24 clear to Neil that, you know, I'm not Image. It's me
25 and you. This is what I get from Image. Then I can

1 start splitting the pie that I get because otherwise I
2 don't have anything, so --

3 Q. Did you ever tell Neil that the percentage
4 with regard to toys is the percentage that went to Todd
5 McFarlane Productions as opposed to TMP International
6 or, you know, your toy companies?

7 A. Well, given that Neil and I -- communications
8 were always between Todd McFarlane Productions and Neil,
9 I don't know if I ever specifically, but that was our
10 relationship, Todd McFarlane Productions and Neil
11 Gaiman.

12 Q. And how did you come up with -- with the
13 percentages?

14 A. You know, I don't recall. I know that Neil
15 had been giving us some information and Larry passed
16 some, so I was probably trying to amalgamate it all in
17 in a way that would make sense.

18 Q. And do you recall the process by which in
19 your counter-offer you were proposing payments relating
20 to Medieval Spawn and Cogliostro of one-fifth of the
21 payments for Angela? Do you recall how you -- where the
22 math came from with that?

23 A. Not exactly, no.

24 Q. Generally do you have any recollection? I
25 mean, I understand your testimony as to why you thought

1 it should be smaller.

2 A. Uh-huh.

3 Q. And was this just where you ended up with
4 that?

5 A. Again it was a counter to what Neil was
6 bringing the information or information that I had. So
7 again trying to clarify the value of each one of these
8 characters and who sort of created what, it was more of
9 that, you know.

10 I think it was more a generality that I felt
11 just looking at these numbers that, you know, Angela
12 should be getting a lot more because I understood that.
13 I was a little more suspect on the other two.

14 Q. I'll show you what's been marked Exhibit 31.
15 Do you recall seeing that?

16 A. No.

17 Q. Do you have any recollection about Exhibit
18 31?

19 A. No.

20 Q. Exhibit 32.

21 A. Is that the same thing that I just saw or
22 not?

23 MR. KAHN: There's been some changes.

24 THE WITNESS: What.

25 MR. KAHN: Different date.

1 BY MR. ARNTSEN:

2 Q. If you look at -- if you want to compare
3 Exhibit 32 to Exhibit 30, and Exhibit 32 is about two
4 months later, and what it appears to do is add a
5 reference for McFarlane Toys.

6 A. Oh, I see.

7 Q. And what I'm trying to understand is the
8 process that you went through in revising your
9 counter-offer to add that additional reference to
10 McFarlane Toys.

11 A. Oh, I see. It appears that although it
12 should read Todd McFarlane Productions, again we sort of
13 ran into it, you and I, that once you start using my
14 name and all these companies, people start to confuse.

15 So this -- this appears to be a clarification
16 that Neil's deal is with Todd McFarlane Productions.
17 And so again people have a tendency to want to jump by
18 the party that they are actually doing business with and
19 lump all my companies, although they are separate, as
20 sort of doing business with them directly. And so again
21 I think this is clarifying that he would get a
22 percentage of what Todd McFarlane Productions got and
23 from the toy company, not what the toy derived because
24 that's -- that's another number.

25 Q. Do you recall the process that caused you to

1 modify your counter-offer with this? Were there some
2 discussions involved that you can recall?

3 A. There were either -- no. Somebody might have
4 been confused about a definition. Somebody might have
5 just been trying to clarify a definition or something.

6 Q. Do you recall any conversations with Neil
7 during this time about this sort of exchange of
8 information and offers and counter-offers?

9 A. What was the question?

10 Q. Do you recall having any conversations with
11 Neil really between the meeting in your house in Phoenix
12 and when you met with him in Oakland in May of '97?

13 A. Right.

14 Q. Do you recall any conversations with him in
15 between those two times?

16 A. Not specifically.

17 Q. Do you have any general recollection of any
18 such conversations?

19 A. Yes, I do. I don't recall. I know again,
20 because I know Larry was doing most of the go between,
21 so I don't know. I don't recall if Neil and I ever
22 butted into each other during any of that.

23 Q. So you don't have any recollection of any
24 such conversations?

25 A. Right.

1 Q. Is that correct?

2 A. Right.

3 Q. What do you recall happening next after you
4 sent the revised counter-offer, Exhibit 32?

5 A. Generally, I -- I know it wasn't accepted.

6 Q. How do you know that?

7 A. Because we were sitting in the room and Neil
8 is suing me right now.

9 Q. Do you have any other recollection as to, you
10 know, what happened next after Larry sent out Exhibit 32
11 in February of '97?

12 A. No, not directly to what the reaction was.

13 MR. ARNTSEN: Mark this.

14 (Deposition Exhibit Number 47 was then
15 marked for identification.)

16 BY MR. ARNTSEN:

17 Q. I'll show you what's been marked Exhibit 47.

18 And just for the record here, Mike, just to
19 make this clear with this, we had -- we just came out --
20 Jeff just came up with this yesterday. Is that correct?

21 MR. SIMMONS: Yes.

22 MR. ARNTSEN: We haven't produced it yet.

23 MR. SIMMONS: This is correct. We found
24 documents in another attorney's office that we were in
25 the process of going through and producing and some of

1 them may have been produced to you this week and we got
2 it back.

3 (Discussion off the record.)

4 BY MR. ARNTSEN:

5 Q. Have you seen Exhibit 47 before?

6 A. No. Or I don't recall.

7 Q. Do you have any recollection of seeing
8 Exhibit 47 before?

9 A. No.

10 Q. And you see that Exhibit 47 is a letter from
11 Neil's lawyer to Larry Marder, correct?

12 A. Right.

13 Q. And that attached is some DC contracts,
14 correct?

15 A. It appears to be a replication of some type
16 of contract, but I don't know what that contract is.

17 Q. Right. But on the third page from the top it
18 says "DC Comics," correct?

19 A. Right. But this is a Xerox, so I can't vouch
20 for its authenticity.

21 Q. Right.

22 A. So it's a contract here.

23 Q. Right. But on the first page it says DC
24 contracts and Neil Gaiman, right, or DC Comics and Neil
25 Gaiman?

1 A. Right.

2 Q. And you see on the first page of Exhibit 47
3 the first paragraph indicates that this appears to be a
4 response to your February 18th offer, which is Exhibit
5 32, right?

6 MR. KAHN: It's sent to Larry Marder for your
7 reference there.

8 THE WITNESS: Right. But that's what that
9 line says there.

10 BY MR. ARNTSEN:

11 Q. And do you recall discussing Exhibit 47 with
12 Mr. Marder?

13 A. No.

14 Q. No recollection at all?

15 A. No.

16 (Deposition Exhibit Number 48 was then
17 marked for identification.)

18 BY MR. ARNTSEN:

19 Q. I'm showing you what's been marked Exhibit
20 48.

21 Off the record.

22 (Whereupon, a short recess was then had at
23 10:22 a.m. until 10:25 a.m.)

24 BY MR. ARNTSEN:

25 Q. Take a look at Exhibit 48. Do you recall

1 seeing that document before?

2 A. I don't recall, but it appears to have been
3 sent to me.

4 Q. Do you see how -- it appears to be a note to
5 you from Neil, correct?

6 A. Correct.

7 Q. Dated April 22, 1997, correct?

8 A. Correct.

9 Q. And you see it indicates in the first
10 sentence, "Further to our yesterday's conversation" and
11 then he talks about toy payment?

12 A. Correct.

13 Q. Do you have any recollection of that
14 conversation?

15 A. Not specifically.

16 Q. Generally?

17 A. Well, generally I think all the conversations
18 were we're humming the same bars. We were still trying
19 to plow through our global sort of agreement here.

20 So I'm -- generally I would say the
21 conversation dealt with us trying to keep moving forward
22 through the process.

23 MR. ARNTSEN: Mark that.

24 (Deposition Exhibit Number 49 was then
25 marked for identification.)

1 BY MR. ARNTSEN:

2 Q. Can you just take a look at Exhibit 49. And
3 I'm not going to -- you don't need to -- I mean, it's up
4 to you. You certainly are free to read it if you want
5 to, but I am not going to ask you questions about the
6 details or substance of it. I'm going to basically ask
7 you what it is and put it in context?

8 A. Okay.

9 Q. So, take as much time as you think you need
10 to feel comfortable with Exhibit 49 and if you decide
11 you want to look at it in more detail because of some
12 question I ask you, you'll have plenty of time to do it
13 at that time, too.

14 Do you recognize what Exhibit 49 is?

15 A. Yes. It looks like it's a transcript of --
16 of a conversation Neil and I had.

17 Q. Was this a conversation in April or early
18 May, 1997?

19 A. Probably.

20 Q. Okay. Where was the meeting?

21 A. I think it was in Oakland up in somebody's
22 hotel room.

23 Q. And do you recall that conversation being
24 taped?

25 A. Right.

1 Q. And then do you recall requesting a copy of
2 that tape?

3 A. I think later on either a copy of the tape or
4 a transcript or something. Just some documentation of
5 having -- having it, you know.

6 Q. And generally what was the -- what was the
7 subject matter or purpose of the meeting that Exhibit 49
8 relates to?

9 A. I think at this point, having failed to not
10 be able to come to some resolution with Larry Marder
11 working in between, I think that we got back to Neil and
12 talked again, if you will, and either he or I requested
13 trying to just get the two boys in the room and see if
14 we couldn't plow through all this again. So it was --
15 it was just a continuation of ongoing conversations.

16 Q. Trying to work out a resolution of the issues
17 between you?

18 A. Right.

19 Q. I'll show you what's been marked Exhibit 2.

20 A. Okay.

21 Q. Do you recall seeing that before?

22 A. Yeah. I think Neil sent it off to me.

23 Q. And what did you do upon receiving Exhibit 2?

24 A. I don't recall specifically, but generally I
25 would have done sort of the same thing, taken a look at

1 it. If I had any follow-up questions or inquiries, I
2 would have -- I would have asked about them.

3 Q. Okay. Asked who about them?

4 A. Well, either get clarification from Neil or
5 if that wasn't enough then possibly try to get answers
6 elsewhere, but again looking at information trying to
7 see whether that's acceptable information or not.

8 Q. Do you notice that Exhibit 2 has a FAX line
9 across the top dated July 30, 1997 from Todd McFarlane
10 Productions to Paul?

11 A. Right.

12 Q. Who's Paul?

13 A. Probably Paul Burke.

14 Q. And who is he?

15 A. The president of the toy company.

16 Q. Okay. Do you recall discussing Exhibit 2
17 with anyone after you received it?

18 A. Not really.

19 Q. How is that different from "No"?

20 Do you have any recollection of discussing it
21 with anyone?

22 A. No.

23 Q. Were there any parts of Exhibit 2 that you
24 didn't understand upon reviewing it?

25 A. Probably.

1 Q. Exhibit 2 is Neil's proposal to you for a
2 resolution, correct?

3 A. Right.

4 Q. What parts of this didn't you understand?

5 A. I don't know specifically, but given that we
6 didn't finalize the deal, there must have been something
7 there.

8 Q. Well, why don't you look through and just
9 tell me as you sit here today if there are any of the
10 provisions there that -- that you don't understand or
11 believe you didn't understand back then?

12 A. Again they would have been probably more
13 general questions. So, for instance, let's just start
14 at the top. Creator royalties; well, what's the
15 definition of a creator? In some contracts sometimes
16 that includes the writer, the writer, penciler and the
17 writer, penciler, inker. As a matter of fact, in some
18 cases it also includes the letterer and the colorist.
19 So he's got a creator royalty. Well, who is that?
20 Because I penciled and inked, so is the inker involved
21 in this or wouldn't he be involved in it?

22 Q. Okay.

23 A. Again questions like -- at times it was one
24 of the things that kept sort of hopping in and hopping
25 out was I was getting numbers and I had to clarify again

1 is that number for the creative party? Then we have to
2 divide it by two because there was at least two of us.
3 Sometimes we even had to divide it by three given that I
4 was the inker. So is that an inclusive number or isn't
5 it an inclusive number?

6 Later on merchandising, promotional he uses
7 net again as we sort of determined earlier and that's
8 sort of an odd word and I probably would have wanted
9 some clarification or figured out how we got to net and
10 we would have had to sort of make sure that we were all
11 on the same page as to net.

12 And even in some of the pro rata stuff that
13 we would have to come up with some kind of agreement,
14 and again there's different sets of circumstances to
15 different situations and all, so it would have just
16 been -- it would have just been general clarification.

17 Q. I'll show you what's previously marked
18 Exhibit 1. Have you seen that before?

19 A. No.

20 Q. Do you see that? Who is Sheila Egger?

21 A. She is my assistant.

22 Q. It appears she just indicated to Neil that
23 you were going to get back to him with a response to
24 Exhibit 2, is that correct?

25 A. Right.

1 Q. Do you recall doing so?

2 A. Not specifically, but I might have just said
3 "Tell Neil I'll get back to him." So whether she did
4 that as a FAX or a phone, I don't know how she would
5 have done it.

6 Q. What do you recall was the next step in this
7 process?

8 A. I don't.

9 Q. I'll show you a document that's marked
10 Exhibit 19. Do you recall seeing Exhibit 19?

11 A. Right.

12 Q. And what is Exhibit 19?

13 A. It appears to be a letter from Neil to myself
14 and us again trying to get to a resolution of our
15 ongoing discussions.

16 Q. And he's proposing a resolution, correct?

17 A. Right.

18 Q. And what was your --

19 A. Or he's doing a point. We're going over big
20 broad strokes here, right. We're getting the main
21 points, if you will, of some of the accounting, so --

22 Q. Were there any significant issues with regard
23 to the resolution that were not set -- not discussed in
24 Neil's letter?

25 A. Well, most of this is accounting, so again

1 eventually we'd have to get around to doing the things
2 that lawyers like to have in contracts, too: Indemnity
3 clauses, who has jurisdiction, or when you trade off,
4 all those other sort of silly paragraphs, so --

5 Q. What was your response to Exhibit 19?

6 A. I think we were -- I think we were heading in
7 a good direction. I think -- I don't know if this
8 came -- it appears this came after our conversation in
9 Oakland, so this was taking some of what Neil and I had
10 discussed in Oakland and tried to push this all forward.

11 Q. Okay. Can you identify what Exhibit 20 is?

12 A. It is a handwritten FAX. It looks like it's
13 from me sent to Neil.

14 Q. I notice that on the third line it says, "All
15 I can say to the point is beauty."

16 A. Right.

17 Q. What does that mean?

18 A. It's a Canadian term. It says right there.

19 Q. I know. What's it mean?

20 A. It means -- it means pretty good.

21 Q. Okay.

22 A. Right.

23 Q. As of this point in time did you think you
24 pretty well had a deal in place?

25 A. Well, I -- I thought we had some of the broad

1 strokes of the accounting inching toward where we wanted
2 to go to, right.

3 Q. And you said there were a couple of other
4 clarification questions you had, right?

5 A. Right.

6 Q. And were there any open issues in your mind
7 other than those that you set forth in Exhibit 20?

8 A. Well, directly everything outside of
9 accounting still is sort of open to discussion, but
10 again this is all accounting. Most of this stuff that
11 Neil and I were -- the big issues were usually
12 accounting issues, so again there would have to be
13 follow-up details. But again as far as accounting,
14 these seem to be my -- my concerns at this time.

15 Q. And again these discussions weren't just
16 limited to accounting. For instance, sort of central to
17 the transaction was Neil exchanging his rights in
18 Cogliostro and Medieval Spawn for your rights in
19 Miracleman, correct?

20 A. Right. His accounting rights. Not his
21 rights. His accounting rights.

22 Q. So, was he still retaining -- he wasn't
23 conveying to you all of his rights to Cogliostro and
24 Medieval Spawn in exchange for all of your rights to
25 Miracleman?

1 A. I don't understand the question.

2 Q. Okay. You said that -- when I asked the
3 question initially you said, no, Neil was only going to
4 convey to you his accounting rights --

5 A. Right.

6 Q. -- to Cogliostro and Medieval Spawn.

7 A. Right.

8 Q. What rights was he going to retain after
9 having done that?

10 A. Well, at that point that's all he had --

11 Q. Okay.

12 A. -- was accounting rights.

13 Q. So, he was going to convey what he had to
14 you?

15 A. What I think it was was that -- is that he
16 was getting paid moneys for some of those characters, so
17 again those accounting rights then would be shifted over
18 to me and I wouldn't have to actually pay him any more
19 for Medieval Spawn or, you know, however we decided the
20 other characters for an example.

21 Q. Okay. Right. So what this deal contemplated
22 was he was going to convey to you whatever rights he had
23 in Cogliostro and Medieval Spawn in exchange for
24 whatever rights you had in Miracleman, correct?

25 A. For accounting purposes.

1 Q. Well, for the -- after that transaction he
2 wouldn't have any residual rights of any kind in
3 Cogliostro and Medieval Spawn, correct?

4 A. I believe that's what we had agreed to.

5 Q. And you wouldn't have any rights, residual
6 rights, in Miracleman, correct?

7 A. Correct.

8 Q. So whatever rights you had, they were getting
9 transferred back and forth, right?

10 A. Right.

11 Q. And that was -- I mean, that was one of the
12 terms of the deal that Neil was setting forth in Exhibit
13 19, correct?

14 A. Right.

15 Q. And then what the accounting issues related
16 to were sort of back payments relating to Cogliostro and
17 Medieval Spawn up to the time of the deal and then
18 payments for Angela both going backwards and forwards,
19 correct?

20 A. Right.

21 Q. Those were the accounting issues, right?

22 A. Right.

23 Q. And, for instance, as among the rights that
24 you were going to convey to Neil relating to Miracleman
25 were any copyright or trademark rights you had to

1 Miracleman, correct?

2 A. Correct.

3 Q. And again putting aside the question of, you
4 know, whether he had any and what they were, whatever
5 intellectual rights Neil had to Cogliostro and Medieval
6 Spawn were coming to you, correct?

7 A. It was never a point of conversation, but,
8 you know, we assumed that lock, stock and barrel both
9 ways, yes.

10 Q. Okay. I'll show you what's been marked
11 Exhibit 33 and ask you if you've seen that? And you may
12 want to look at it in the context of Exhibit 20.

13 Do you recognize Exhibit 33 as a response by
14 Neil to you of your note to Neil that's Exhibit 20?

15 A. Right. Actually, we -- they both have the
16 same date.

17 Q. Right. And in 20 you state in the second
18 paragraph "Before consummating this marriage I just need
19 clarification on a few things," correct?

20 A. Correct.

21 Q. And the first one relates to the exchange
22 date, correct?

23 A. Right.

24 Q. And that's item 1 of Neil's response,
25 Exhibit 33, correct?

1 A. Right.

2 Q. And so was that satisfactory to you?

3 A. Well, we would probably do a follow-up,
4 something a little more impressive than two boys doing
5 handwritten stuff given that we had a complete dispute
6 at this point, but again the big points -- the big
7 points for accounting were agreed upon here.

8 Q. And nowhere in any of this correspondence
9 does it discuss this follow-up contract you're talking
10 about, right?

11 A. Right.

12 Q. Okay. So item 1 of Exhibit 33 is Neil's
13 response to your first request for clarification,
14 correct?

15 A. Right.

16 Q. And that was satisfactory to you, correct?

17 A. Right.

18 Q. Then item 2 was your question on whether the
19 creator royalty presented, you say, in his DC offer.
20 Where the heck is that? What were you referring to
21 there, the creator royalty presented in his DC offer?

22 Is that referring to Exhibit 2, the creator
23 royalty discussed there?

24 A. It may -- it may have been have just been --
25 I don't know specific to any one of these papers, but

1 again just the general term in and of itself because
2 it's -- again royalties are sometimes divisible
3 depending on the number of people.

4 Q. Right.

5 A. So again sometimes -- and this was part of
6 the confusion. Sometimes Neil would use the term and
7 sometimes it related to just the writer's pot and other
8 times it related to more than the writer's pot and it
9 seemed to sort of move at times, so I needed to start to
10 sort of clarify that.

11 Q. It refers to the creator royalty in Exhibit
12 2, correct?

13 A. No. I'm -- I'm asking the question generally
14 as it pertains to the questions that we discussed all
15 the time, so I don't know if it was specific to any one
16 number. It was just, "Let's be clear that when we're
17 talking about certain things, you know, as a creator
18 royalty in DC, when you use 'creator' is that writer or
19 is that creator? And if it's creator, then how many
20 people are involved in the creator part of it?"

21 Q. And then in item 2 of Exhibit 33 he responds
22 to that question, correct?

23 A. Correct.

24 Q. And he says no, that's the writer, creator
25 royalty, correct?

1 A. Right.

2 Q. And did you have any further discussions with
3 him on this?

4 A. I don't think so.

5 Q. Okay. And then item 3 refers to the -- well,
6 it's not numbered, your third request for clarification
7 which is in that indented paragraph on Exhibit 20,
8 correct?

9 A. Right.

10 Q. And you said it relates to a formula DC
11 Comics uses on derivative characters, correct?

12 A. Right. Right. I was asking for the formula.

13 Q. Right. And Neil says the formula is 50
14 percent of Angela, right?

15 A. Correct.

16 Q. Did you have any further discussions with
17 Neil on that?

18 A. No, not that I recall.

19 Q. So Neil had responded to all of your -- to
20 your requests for clarification and you had no further
21 discussions with him on his responses, correct?

22 A. I don't recall any.

23 Q. Okay. So at this point in time did you
24 believe you and Neil had reached an agreement on the
25 royalty and accounting issues?

1 A. No.

2 Q. So what was still left to be agreed on?

3 A. Some of these answers.

4 Q. Well, and what were you doing -- again I
5 thought you indicated you didn't get back to Neil on any
6 of his answers?

7 A. Right.

8 Q. So, what was the disagreement?

9 A. Well, it -- let's just take it from my
10 perspective now, okay? We're getting close. I've got
11 my hopes up. So I asked a couple follow-up questions to
12 Neil because we're getting close and I get these
13 answers.

14 I'm suspect about the answers. I've been
15 suspect about some of his answers for quite some time,
16 sir. So, when I see that he's now making up a formula,
17 he's not saying, "This is how it works." He's making up
18 a formula. "I'll just calculate it."

19 Now he's making it up that it's like, well,
20 is it a formula or isn't it a formula? You keep
21 referring to your DC contract and now are you just going
22 to make it up on the sly here? You know what, I'll do
23 some investigation on my own.

24 So at this point now I'm not getting again
25 the satisfaction I need out of Mr. Gaiman's answers, so

1 I at this point decide I should sort of investigate a
2 little bit further.

3 Q. And did you look at the DC contract that was
4 sent to Mr. Marder?

5 A. No. I never saw it.

6 Q. Well, then the --

7 A. I never saw it. This is the first time I've
8 ever seen this elusive contract, so it will be quite
9 curious reading tonight.

10 Q. And did you talk -- Mr. Marder had previously
11 provided to you a summary of Neil's DC contract
12 provisions, correct?

13 A. I don't know if it came from him, but I got
14 something of one, one page or two pages or something.

15 Q. We previously discussed Exhibit 27, correct?

16 A. Right. I thought you meant from his actual
17 contract. Excuse me.

18 Q. No. But Exhibit 27 is a memo from Larry
19 Marder to you saying enclosed is a breakdown of all the
20 contracts that Neil is working under at DC, correct?

21 A. Correct.

22 Q. So, did you check back with Mr. Marder
23 saying, "I want to -- I want to verify some of Neil's
24 statements here"?

25 A. Well, somewhere along the line Mr. Marder got

1 pushed out of all of this because it wasn't working
2 again.

3 Q. Right.

4 A. So again I don't -- I don't quite recall.
5 But again I was getting conflicting information or
6 inconsistent would be sort of a fair term --

7 Q. All right.

8 A. -- information and I needed sort of
9 clarification.

10 So, at this point in '97 I believe there is
11 no Larry Marder. I have pushed both of us somewhat --
12 there is no Larry. It's Neil and I again. I'm now
13 having dialogue with Neil and I'm asking Neil questions
14 and I'm getting answers and the answers don't quite sit
15 with me.

16 So now I'm -- at this point I believe this is
17 when I tried to contact Terri Cunningham because she is
18 the keeper of the DC contracts, so, you know, she -- she
19 would have sort of -- she is as close to the horse's
20 mouth as I can get.

21 Q. Okay.

22 A. So I wouldn't have talked to anybody really.
23 I wanted to sort of get this down to make sure that we
24 were both sort of consistent and happy with where we
25 wanted to be here and I had outstanding issues at this

1 point.

2 Q. Did you ask Neil to send you a copy of his DC
3 contract?

4 A. Casually off and on. I said, "You want to
5 send me the contract? It would make it easier." But
6 again for privacy reasons and I -- I got contracts, too,
7 you know. So, you know, he didn't want to send it.

8 He gave me his numbers. I assumed they were
9 truthful numbers based on reality. So again, you know,
10 that was -- that was sort of our relationship at the
11 beginning, so --

12 Q. What do you mean he didn't want to send them?

13 A. I never had it. I never got it. So I don't
14 know what his reasons are. Mr. Gaiman, you can ask him
15 why he never sent it to me.

16 Q. Okay. Even though he did send it to
17 Mr. Marder?

18 A. He sent it to Mr. Marder. He didn't send it
19 to me, so --

20 Q. And Mr. Marder was your employee at Image,
21 right?

22 A. Mr. Marder was -- depending on the date, was
23 probably the head of Image comic books at that time.

24 Q. And then went from there to work directly for
25 you -- for your company, correct?

1 A. Correct.

2 Q. As long as we are talking about -- we are
3 interested in the DC contract, take a look at the third
4 page of Exhibit 47.

5 A. Okay.

6 Q. Just a second here. I'm just going to sort
7 through this stuff.

8 Do you see how in the first paragraph here,
9 the introductory paragraph, the second sentence, it
10 says: "In accordance with your agreement, you have
11 revised the pre-existing characters of DREAM (SANDMAN)
12 and DESTINY."

13 A. Excuse me. Where am I starting to read?

14 Q. The first paragraph, second sentence.

15 A. Oh, okay.

16 Q. In accordance.

17 THE WITNESS: Right here?

18 MR. KAHN: Right here.

19 THE WITNESS: Oh, okay. Go ahead.

20 BY MR. ARNTSEN:

21 Q. "In accordance with the agreement, you have
22 revised the pre-existing characters of DREAM, (SANDMAN)
23 and DESTINY, and have created the characters of" -- and
24 then it lists a number of characters, correct?

25 A. Right.

1 Q. And then the last sentence of that
2 paragraph -- and then it says after, "collectively
3 referred to herein as the 'Characters'" at the end of
4 that sentence, correct?

5 A. Right.

6 Q. Okay. And then if you turn to the next page,
7 item (b), Retail products and Services. Do you see
8 that?

9 A. Uh-huh.

10 Q. You have to use words.

11 A. Yes, sir.

12 Q. And if you can take a look at item -- just
13 read through item (b) there.

14 A. You want me to read all of (b)?

15 Q. Yes. Both paragraphs.

16 A. Okay. Okay.

17 Q. Item (b) relates to royalty payments to Neil
18 when characters -- when the characters are used for
19 retail products, correct?

20 MR. KAHN: But before he answers I just want
21 to object. I'm a lawyer and I have trouble following
22 this.

23 THE WITNESS: I'm not a lawyer and this ain't
24 my contract, so you know what --

25 MR. KAHN: Let me just --

1 THE WITNESS: I have no opinion about
2 somebody else's contract or definitions and what the
3 relationship is with somebody else. So with that said,
4 ask me your questions, please.

5 MR. KAHN: Let me -- let me --

6 MR. ARNTSEN: I'll let your lawyer get his
7 objection in first.

8 MR. KAHN: Let me just also say, you know,
9 this is an isolated paragraph in a document written in
10 dense legalese, which I'm having trouble following.

11 THE WITNESS: And I have never seen.

12 MR. KAHN: And my understanding, going back
13 to Exhibit 2, is that we are not using his special deal
14 but we are supposed to be using a standard DC deal with
15 doing these calculations.

16 But, with all of that, you can ask him
17 questions about his special deal over here.

18 BY MR. ARNTSEN:

19 Q. Can you turn back to paragraph (b) which you
20 were just reading.

21 MR. KAHN: We're there.

22 BY MR. ARNTSEN:

23 Q. All right. That relates to royalty payments
24 for retail products and services relating to characters
25 that Neil -- relating to characters, correct?

1 A. You know, I can't speak to the definitions of
2 DC comic books, so --

3 Q. Okay. So you can't answer my question?

4 A. Right.

5 Q. All right.

6 A. This is not my contract.

7 Q. Right. And you note item (b) has two
8 paragraphs, correct?

9 A. Right.

10 Q. And the first paragraph contains certain
11 percentage royalty payments relating to retail products
12 and services, correct?

13 A. I can't say that.

14 Q. Well, do you see the .8 percent?

15 A. I see -- here's what I see. I see that there
16 are numbers in relationship to something. I don't know
17 exactly what those somethings are, how they derived it
18 and what their definitions are. But I do see numbers,
19 right.

20 Q. Right.

21 A. I can't say specifically what each one of
22 those are for.

23 Q. Right. One of those numbers, the first such
24 number is .8 percent, correct?

25 A. Right. There is a number .8 percent on this

1 piece of paper, right.

2 Q. And then that's under small i, correct, in
3 the first paragraph, correct?

4 A. Right.

5 Q. And then under small ii there's another
6 percentage, 2.5 percent, correct?

7 MR. KAHN: We'll stipulate that that number
8 appears under ii.

9 BY MR. ARNTSEN:

10 Q. All right. Do you see that, sir?

11 A. Yes.

12 Q. All right. And then the second paragraph
13 starts, "Notwithstanding the foregoing, with respect to
14 the characters of DREAM (SANDMAN) and DESTINY only," and
15 then it contains a following discussion, correct?

16 A. Okay.

17 Q. And Dream, Sandman and Destiny were the
18 characters that Neil had revised, correct?

19 If you need to look back at the first
20 paragraph on the first page of the contract you can do
21 so.

22 A. It appears that way, although I can't
23 specifically verify what this contract is for, right.

24 Q. And then in the second paragraph of (b) it
25 contains some percentages relating to the Dream, Sandman

1 and Destiny characters, correct?

2 A. Right.

3 Q. And those are different percentages than in
4 than those set forth in the first paragraph of item (b),
5 correct?

6 A. Right.

7 Q. For instance, instead of .8 percent there's a
8 .592 percent, correct?

9 A. Right.

10 Q. And instead of a 2.5 percent there's a 1.85
11 percent, correct?

12 A. Right.

13 Q. The numbers in the second paragraph are
14 approximately 75 percent of the numbers in the first
15 paragraph, correct?

16 A. Well, you know, I don't know that there's any
17 direct correlation. You're matching numbers. I don't
18 know that there's any direct match here.

19 Q. Okay. So you don't know if it's
20 approximately 75 percent?

21 A. Well, .5, .592 is not 75 percent of 2.5.

22 Q. No, but it's --

23 A. Your math -- you're now making -- you're
24 making an assumption that we're now matching numbers.
25 You're matching one number to another.

1 MR. KAHN: I think he -- I think all Allen is
2 asking you for is pure math.

3 THE WITNESS: For pure math, if you're
4 talking .592 and matching it to .8, yes. If you're
5 matching the number 2.5 to the number 1.8, right.

6 BY MR. ARNTSEN:

7 Q. Okay. The numbers in i and ii in the two
8 paragraphs, the item (b), correct?

9 A. Correct.

10 Q. All right. And then can you turn to page 4
11 of the contract. Do you see under item 2 (a) it
12 discusses spin-offs?

13 A. Yes.

14 Q. Why don't you take a look at that paragraph
15 for a minute.

16 A. Read it all the way down to (b)?

17 Q. Yes.

18 A. Okay.

19 Q. Have you had a chance to read it?

20 A. Yes.

21 Q. And that provides for a pro rata allocation
22 in the case of spin-offs correct?

23 A. You know, I --

24 MR. KAHN: Before Todd answers, I'm going to
25 object again. I don't know what it provides for. I'm a

1 lawyer. I just read this isolated paragraph. He may
2 understand. It's written in legalese. He's not read
3 the rest of the contract.

4 We will stipulate that this document speaks
5 for itself. If you want Todd to try to interpret this
6 language in isolation, I'll go ahead and let him do
7 that. I don't know what the point is.

8 MR. ARNTSEN: Okay. Can you read my question
9 back, please?

10 (Whereupon, the record was then read
11 back by the reporter as requested.)

12 THE WITNESS: You know, I -- I don't
13 understand what this is saying. I see (a). Next to the
14 word (a) is the word "Spin-offs." The rest of it is --
15 is legalese that sort of unfortunately confuses me as I
16 read it.

17 BY MR. ARNTSEN:

18 Q. Well, you see the phrase "publisher's pro
19 rata allocation," correct?

20 MR. KAHN: Where is that?

21 MR. ARNTSEN: The line that begins
22 "Royalties" about six from the end of the first
23 paragraph.

24 THE WITNESS: That sentence there, it goes
25 all the way up to the top.

1 MR. ARNTSEN: I'm just showing you where the
2 phrase was.

3 MR. KAHN: We see a phrase that says
4 "publisher's pro rata allocation." Do you see that
5 phrase?

6 THE WITNESS: Yes, I do.

7 BY MR. ARNTSEN:

8 Q. What do you understand that to mean?

9 A. I don't know. It's DC Comics.

10 Q. Okay. Can you --

11 MR. KAHN: You know, my colleague just makes
12 a good point, which at least for the record I will note
13 that this Character Equity Agreement attached to Exhibit
14 47 actually references and apparently incorporates two
15 other agreements which are not before the witness or are
16 in the record.

17 MR. ARNTSEN: That's fine.

18 Q. Can you identify what Exhibit 18 is?

19 A. Yes. It appears to be the initial stages of
20 an attempt to draw up a contract.

21 Q. This handwriting on it, whose handwriting is
22 it?

23 A. Mine.

24 Q. Who did you have draw -- draft Exhibit 18?

25 A. I don't recall.

1 Q. What do you recall about -- first of all, I
2 assume that Exhibit 18 was drafted at your direction?

3 A. Right.

4 Q. Who did you direct to do so?

5 A. I don't know who I got this from.

6 Q. Okay. What do you recall with regard to what
7 information did you give whomever you directed to draft
8 Exhibit 18? What did they use to draft it?

9 A. I don't recall. It could have been some of
10 the documents in front of us. It could have been me
11 just verbalizing everything.

12 Q. And this was a character agreement entered
13 into as of July 1, 1997 is what it says, correct?

14 A. At the top, right.

15 Q. And then what's the last page of Exhibit 18?

16 A. It appears to be some accounting numbers
17 derived from Medieval Spawn, Angela, Cosmic Angela, 13
18 inch Angela toys.

19 Q. Okay. And then royalty calculations?

20 A. Right.

21 Q. Whose notes are on this?

22 A. Mine.

23 Q. Can you identify what Exhibit 3 is? Have you
24 seen Exhibit 3 or any part of it before?

25 A. No.

1 Q. Is any of the handwriting on Exhibit 3 yours?

2 A. No.

3 Q. Okay. Can you identify what Exhibit 4 is?

4 Do you know what Exhibit 4 is?

5 A. I'm not done.

6 Q. Okay.

7 A. This is Exhibit 4. It contains notes,

8 additional notes on it.

9 Q. Have you seen Exhibit 4 before?

10 A. I don't recall specifically, but it was FAXed

11 to me, so I probably looked at it.

12 Q. Okay. Is your handwriting on the first page

13 of Exhibit 4 where it says "16 pages"?

14 A. No.

15 Q. Okay. Is your handwriting on the fourth page

16 which has 474 on the bottom? Is that your handwriting?

17 A. No.

18 Q. Is your handwriting on the next page, 475, on

19 the bottom?

20 A. Yes.

21 Q. And then the next three pages are some

22 communications, correct?

23 A. Correct.

24 Q. Okay. Do you recall what the purpose was of

25 Exhibit 4 being FAXed to you at your hotel?

1 A. Yes. Again I think we were trying to head
2 into a resolution and get some of the accounting out of
3 the way at Neil's request, and I think this is just sort
4 of the process of getting -- getting there hopefully.

5 Q. Let me show you what was previously marked
6 Exhibit 4A and ask you if you can take a look at that
7 and I'll ask you some questions about it.

8 Have you seen Exhibit 4A before?

9 A. Not specifically, but I probably did.

10 Q. Does your handwriting appear anywhere on it?

11 A. On the page with the number 473 at the
12 bottom.

13 Q. Yes. Is that -- all the handwriting on that
14 page is yours?

15 A. Yes.

16 Q. And the pages 471 and 472 is a memo to you
17 from Allan Inglis, correct?

18 A. Right.

19 Q. Regarding the Gaiman agreement, correct?

20 A. Right.

21 Q. And it's a royalty calculation on Medieval
22 Spawn and Angela figures, right?

23 A. It's his perception of it.

24 Q. It says "based on our agreement," correct?

25 A. Right.

1 Q. And the total royalty he calculates is
2 \$155,531, correct?

3 A. Correct.

4 Q. And then looking at page 473 with your
5 handwriting, is that this creator percentage being
6 divided by two issue that was discussed that you
7 testified to with regard to some of the prior
8 communications between you and Neil?

9 A. In -- in a general sense this is the end,
10 trying to get a handle on how we apply all these numbers
11 throughout, somewhere throughout this process.

12 Q. Sure. Okay. Mark this.

13 (Deposition Exhibit Number 50 was then
14 marked for identification.)

15 BY MR. ARNTSEN:

16 Q. Who is Allan Inglis?

17 A. Allan was my former COO at McFarlane Toys,
18 TMP International.

19 Q. For what period of time?

20 A. Maybe from '96 to 2001, for about five, six
21 years.

22 Q. Where did he go to?

23 A. Don't know.

24 Q. Why did he leave?

25 A. We moved the toy company from Michigan out to

1 Phoenix and I wasn't inclined to bring him with me.

2 Q. So he stayed in Michigan?

3 A. Right.

4 Q. I'll show you what -- I'll show you what was
5 marked Exhibit 50. Have you seen that before? Do you
6 recall getting this?

7 A. No, but it's got my name on it, so --

8 Q. Do you see the last sentence? It says, "If
9 this isn't going to happen, let me know and we can
10 renegotiate."

11 A. Yes.

12 Q. Did you respond in any way to that?

13 A. No. Or I don't recall. I don't recall.

14 Q. Do you know where in Michigan Allan Inglis
15 lives?

16 A. Right now currently?

17 Q. Lived the last time you knew.

18 A. Well, the office was in Plymouth. In the
19 Detroit area.

20 Q. The best you know he resides in the Detroit
21 area?

22 A. To the best of my knowledge.

23 Q. Take a look at what was previously marked
24 Exhibit 5. What's Exhibit 5?

25 A. It appears to be some of the calculations for

1 some of the moneys that were to be paid to Mr. Gaiman.

2 MR. ARNTSEN: Okay. And this is within the
3 subject area that Mr. McFarlane is a 30(b)(6) designee,
4 correct?

5 MR. KAHN: Sure.

6 BY MR. ARNTSEN:

7 Q. What were these calculations, for the moneys
8 due Mr. Gaiman?

9 A. Right.

10 Q. And on the various pages -- the first page is
11 a summary page, correct?

12 A. Correct.

13 Q. And then it refers to pages A through K,
14 which are attached and there's even a Q on the end of
15 it, correct?

16 A. Q, right.

17 Q. Is this your handwriting on the last page?

18 A. Right.

19 Q. And what was the -- and so what you're saying
20 is instead of the .8 percent it was supposed to be 3.2
21 percent, correct?

22 A. Yes. Probably correcting some errors some
23 place along the line.

24 Q. And so the \$25.24 should be multiplied by
25 four, correct?

1 A. Right.

2 Q. That was what your correction was?

3 A. Yes.

4 Q. And these royalty calculations were under the
5 accounting agreements that you and Neil had reached over
6 the previous months in some of the documents we have
7 discussed, correct?

8 A. Correct.

9 Q. And then on some of these pages there are
10 notes at the bottom?

11 A. Right.

12 Q. Are those notes that you dictated?

13 A. Some may have been. Some may not have been.
14 They just might have been -- I -- I didn't type these.

15 Q. Right.

16 A. So I don't recall how much of this was me
17 dictating, if any, on any of these pages and how much
18 was just giving sort of insight as to what the numbers
19 sort of meant, gave some clarity to some of it.

20 Q. Okay. Well, can you take a look at the third
21 page of Exhibit 5. It's a got a number 528 at the
22 bottom.

23 A. Okay.

24 Q. And this relates to Medieval Spawn toys,
25 correct?

1 A. Right.

2 Q. And you refer, or the note at the bottom
3 starts, the last paragraph, do you see where it says,
4 "Also, I had a conversation with Terri Cunningham."

5 A. Right.

6 Q. That's you, right?

7 A. Right.

8 Q. So this would be a note that you had
9 dictated, correct?

10 A. Probably, right.

11 Q. And is this the conversation with Terri
12 Cunningham that you testified to yesterday?

13 A. Right.

14 Q. And does this refresh your recollection as to
15 when this conversation was?

16 A. With Terri?

17 Q. Yes.

18 A. It references it was just recently, so this
19 is a August 4, 1997 document, so it probably was within
20 a few weeks of that possibly.

21 Q. Okay. And this concerns the -- this was the
22 conversation relating to how DC handles derivative
23 characters, correct?

24 A. Correct.

25 Q. But your conclusion was that notwithstanding

1 that information, you were -- the last sentence, "Still
2 I'm willing to pay some moneys as long as all the other
3 matters are sorted out," correct?

4 A. Right.

5 Q. And then did you state that you had another
6 phone conversation with Terri Cunningham after this
7 time?

8 A. In the -- in the document?

9 Q. No. Yesterday. Do you recall having another
10 telephone conversation with Terri Cunningham?

11 A. Right. I had a follow-up one. Yes, right.

12 Q. Do you remember when that was?

13 A. Probably shortly -- probably in August some
14 time.

15 Q. Okay. And what was the -- what was that
16 conversation about?

17 A. Just getting more clarification on -- on how
18 we prorate stuff. Again, you know, I think that one may
19 have been about how you prorate potential revenue for
20 television stuff or Hollywood stuff or things like that.

21 Q. And why was that an open issue?

22 A. Because I think if we look at some of the
23 other documents it was just part of the big global
24 agreement that, you know, these I think are limited to
25 the specifics of pages A through K and they are not

1 necessarily inclusive of all the accounting that may or
2 may not have been due at that time or was going to come
3 due eventually, so --

4 Q. And what did Ms. Cunningham tell you in that
5 last conversation?

6 A. I don't recall specifically. I just know
7 that it was another inconsistency to all of this.

8 Q. Okay.

9 A. So --

10 Q. And you testified about that conversation
11 yesterday and that's all you can recall about it,
12 correct?

13 A. Right.

14 Q. Would you like to take a little break?

15 A. No, I'm -- I'm ready.

16 Q. Okay.

17 MR. KAHN: Actually, any time in the next ten
18 minutes I would like to take a little break. I can
19 wait.

20 MR. ARNTSEN: Okay. Why don't we -- let me
21 just go through a couple more documents.

22 MR. KAHN: Sure. I don't want to cut you off
23 here.

24 MR. ARNTSEN: There's a logical break point
25 coming up.

1 MR. KAHN: Good.

2 BY MR. ARNTSEN:

3 Q. Showing you what was previously marked
4 Exhibit 7, have you seen that document before?

5 A. Not specifically, no.

6 Q. Do you recall what the urgent message
7 referenced in the second paragraph there is?

8 A. Again just trying to get more follow-up
9 clarification.

10 Q. Have you seen Exhibit 21 before?

11 A. No. I don't recall seeing it.

12 Q. Do you have any understanding as to what this
13 relates to, Exhibit 21?

14 A. I think -- I can't be sure, but this may have
15 been in part of the settlement. Neil wasn't willing to
16 take a verbal apology, so he would like it in cash.

17 Q. Identify what Exhibit 10 is?

18 First of all, is it your handwriting?

19 A. Yes. It looks like me doing some kinds of
20 calculations.

21 Q. Would this again relate to royalty payments
22 to Neil?

23 A. I would presume, yes.

24 Q. Okay. Why don't we take a little break right
25 now.

1 A. Can I just add here that again those numbers
2 are not numbers that were due Neil, but me just trying
3 to get a handle on the process of what we did or did not
4 owe Neil. So those are -- those are not numbers that I
5 would stamp as due Neil.

6 Q. But -- and you're referring to Exhibit 10,
7 correct?

8 A. Correct.

9 Q. Okay. Let's take a little break.

10 A. Just some calculations.

11 (Whereupon, a short recess was then had at
12 11:38 a.m. until 12:06 p.m.)

13 (Deposition Exhibit Number 51 was then
14 marked for identification.)

15 BY MR. ARNTSEN:

16 Q. Can you take a look at Exhibit 6, please.
17 What is Exhibit 6?

18 No, that's Exhibit 51. We'll get to that in
19 a minute. But what is Exhibit 6?

20 A. It appears to be more documents making
21 calculations for potential moneys due to Mr. Gaiman.

22 Q. And there's a cover memo from Sheila Egger to
23 Neil Gaiman, correct?

24 A. Correct.

25 Q. And Sheila sent this on your direction?

1 A. Probably, yes.

2 Q. And the cover memo indicates that Sheila
3 would be sending another check to Neil the next day,
4 right, or that it should be to Neil the next day?

5 A. Right.

6 Q. And again that was at your direction,
7 correct?

8 A. Right.

9 Q. And this is August 11th, correct, of '97?

10 A. Right.

11 Q. And can you take a look at Exhibit 51. Can
12 you tell me what this is?

13 A. Not specifically, but the memo says it deals
14 with foreign sales.

15 Q. And it's a March 26, 1998 check to Neil
16 Gaiman?

17 A. Yes.

18 Q. And would that again relate to royalty
19 payments?

20 A. Right.

21 Q. And this would have been sent at your
22 direction?

23 A. Not necessarily.

24 Q. Who is authorized to send royalty checks for
25 your company without being instructed to do so by you?

1 Under what circumstances?

2 A. By 1998 I've got a lot of accountants, so,
3 you know, we've got -- with all the various companies
4 and all the various people working for me, we've got
5 hundreds if not thousands of bills going in and out all
6 day. So each of those aren't cleared to me.

7 Q. But in order to send this check somebody
8 would have had to have confirm that money was owed
9 Mr. Gaiman, correct?

10 A. Potentially, yes.

11 Q. And how would they have gone about doing so
12 if they didn't contact you in connection with that?

13 A. You know, I don't know. I don't know who --
14 who sent this check out and what the circumstances were
15 for it.

16 Q. Okay. At any period of time between August
17 1st of '97 and March 26th of '98 did you contact Neil
18 and say, "Neil, we don't have a deal" or words to that
19 effect?

20 A. I don't think so.

21 Q. So during that period of time it would have
22 been reasonable for Neil to assume that the deal was in
23 place, right?

24 A. You'd have to ask Neil that question.

25 Q. You don't know of any reason why it wouldn't

1 be, right?

2 A. You'd have to ask Neil that question.

3 Q. All right. Because you didn't communicate
4 with him on that subject, right?

5 A. Right. I didn't.

6 Q. And nobody communicated with him on your
7 behalf to your knowledge on that subject, correct?

8 A. Correct.

9 Q. Can you take a look at Exhibit 8. What is
10 that?

11 A. A letter to Mr. Gaiman that I either typed or
12 dictated sort of officially giving him my stance at that
13 point as to where I was at.

14 Q. And this letter was January 12, 1999,
15 correct?

16 A. Correct.

17 Q. Had you had any communications with
18 Mr. Gaiman between August of 1997 and January of 1999?

19 A. Me personally?

20 Q. Yes.

21 A. Not that I recall.

22 Q. Or anyone from your business on your behalf
23 other than royalty payments that we've gone over?

24 A. Probably some of the people in the office.

25 Q. Do you have any recollection of any?

1 A. Just, you know, Neil phoning, somebody on
2 Neil's behalf, somebody's phoning.

3 Q. Do you have any specific recollection of any
4 such calls or being told of any such calls?

5 A. Yes.

6 Q. What do you recall?

7 A. "Just put it on hold, you know. Just don't
8 answer. Again okay. You know, click. Just tell him
9 click."

10 Q. What do you mean there?

11 A. Again, we understand. We understand that
12 Neil's phoning. We got it. We got your message.

13 Q. So Neil is calling your office asking to
14 speak with you?

15 A. I don't know. Just Neil, Neil or Neil's
16 representative, somebody is calling again.

17 Q. Regarding what?

18 A. Just I don't know. Again I never took the
19 phone calls. Just they are phoning again. Probably
20 you'll have to ask Neil why he was making the phone
21 calls or instructing people.

22 Q. But how do you know that such phone calls
23 occurred?

24 A. Because somebody would have said to me, "Hey,
25 you know, Neil phoned again or his representative.

1 Okay. Okay."

2 Q. That's the extent of your recollection of
3 these calls?

4 A. Yes.

5 Q. All right. What -- what prompted you to send
6 Exhibit 8?

7 A. Probably the number of phone calls, you know,
8 just to sort of get my people not to have to keep
9 answering phone calls. I'll just go, "Here, you know,
10 I'll send him a letter. Make it quick."

11 Q. How did you -- describe the process by which
12 you came up with a position set forth in this letter?

13 A. I sort of went over the ongoing conversations
14 we had, what we had talked about potentially confirming
15 in Oakland and put all that again feeling that Medieval
16 Spawn who was sort of the big crux in my sort of ongoing
17 conversations, was that I essentially all of this from
18 my perspective was just to get Spawn back and that, and
19 that whatever I had traded -- again I felt that I -- I
20 was trading for something I already had. So at this
21 point I was -- I'm going to keep all of this.

22 And I think in the -- one of the things we
23 had talked about is maybe continuing to give ongoing
24 accounting on Angela, but even that, I mean, we are
25 essentially down to Miracleman and potentially Angela.

1 That's all we have got at this point. He's got my
2 money. He's got my money. I'm not going to get money
3 back out of this guy. So sort of going let's just cut
4 this thing. Let's just cut this thing completely now.

5 Q. Do you recall getting a telephone call from
6 anyone from DC or Marvel on Neil's behalf relating to
7 one other project that Neil might want to do using
8 Medieval Spawn or Angela?

9 A. No.

10 Q. You have no recollection of anything like
11 that?

12 A. No.

13 Q. And so what you're saying is that what
14 prompted you to send this letter was because Neil had
15 been calling your office and you wanted him to stop, is
16 that correct?

17 A. Well, either Neil or some representative.
18 Somebody, you know, so --

19 Q. Nothing, nothing else? There wasn't anything
20 else involved that caused you to send Exhibit 8 on
21 January 12th of 1999?

22 A. No, I don't think so.

23 Q. Okay. Did you receive any response from
24 Neil?

25 A. No, I don't recall.

1 Q. Do you have any recollection of any
2 communications with Neil between when you sent Exhibit 8
3 and when this lawsuit was filed?

4 A. No.

5 Q. Do you recall any of your representatives or
6 employees having communications with Neil that were
7 transmitted to you?

8 A. No.

9 Q. Okay. So Exhibit 8 is sort of the last
10 communication in the chain, correct?

11 A. Yeah. It appears to be.

12 Q. And you don't know of anything different from
13 that, right?

14 A. Right.

15 Q. I apologize. Just one other question on
16 Exhibit 6, which we discussed already.

17 Can you take a look at the third page. It's
18 got a number 521 at the bottom. Are you there?

19 A. Yes.

20 Q. And you instructed your staff as to how to go
21 about this calculation, correct?

22 A. Right.

23 Q. And looking down, this relates to the Angela
24 and Angela trading card, correct?

25 A. This is in reference to a Spawn trading card

1 set that had -- it appeared with 109 cards in it.

2 Q. And 17 of them had Angela on them, correct?

3 A. I can't -- I can't say that. I can't say
4 that for a certainty.

5 Q. The first line is publisher's royalty,
6 correct?

7 A. Right.

8 Q. And then the second line is total number of
9 cards that include art work of Angela, correct?

10 A. That's what the line said.

11 But what I'm saying is that potentially this
12 calculation could have been an inclusive one. Those 17
13 cards may or may not have been Angela. They may have
14 included other ones. So I don't know if we had other
15 calculations for Medieval Spawn and Cogliostro. We may
16 have just taken all of them and lumped them and somebody
17 may have called them Angela. I'd have to look at the
18 cards and see if they were all Angela. They may have
19 included some of the other characters we're talking
20 about.

21 Q. And so 17 of 109 is 16 percent of the set,
22 correct?

23 A. Right.

24 Q. And then you multiply that 16 percent times
25 the publisher's royalty, correct?

1 A. Right.

2 Q. And then you come to the publisher's royalty
3 of Angela art work, correct?

4 A. Right.

5 Q. And again that's 16 percent of the 323,000,
6 correct?

7 A. Well, I lost you there.

8 Q. You're multiplying the \$323,341.72 times 16
9 percent to come up with the 51,734.68, correct?

10 A. Right.

11 Q. Okay. What does the next row mean?

12 A. Given -- it's giving a weight to an
13 individual card within the confines of it, which would
14 mean that the card set was called Spawn. It was based
15 on Spawn. The headline was Spawn. The title was Spawn.
16 It was listed as Spawn, Spawn, Spawn, Spawn. So, to say
17 that a Spawn card and a 20th ranked character would be
18 of equal value didn't make -- didn't make much sense.

19 So there was a deduction that essentially was
20 from Spawn, the big boy. And so anything -- anything
21 less than Spawn isn't at the same value. And then
22 there's a number. Then it is multiplied.

23 Q. So you concluded that the Angela character or
24 characters were worth 50 percent of the Spawn character,
25 is that what that means?

1 A. Right. Which probably was a generous number
2 at the time.

3 Q. Okay. I just need to understand the
4 calculation process.

5 And again you don't recall if that refers to
6 just Angela or Angela, Medieval Spawn and Cogliostro,
7 correct?

8 A. Right. I'd have to look at the set.

9 Q. Okay. Okay. Here's a small portion that
10 you're probably going to want to mark confidential,
11 attorneys eyes. I'm going to ask him -- let's go off
12 the record just for a second.

13 (Discussion off the record.)

14 (The following excerpt was designated
15 "Confidential.")

16 (Discussion off the record.)

17 (Deposition Exhibit Number 52 was then
18 marked for identification.)

19 BY MR. ARNTSEN:

20 Q. Can you identify what Exhibit 16 is?
21 Have you seen Exhibit 16 before?

22 A. No, not that I recall, but --

23 Q. What did you do, if anything, to ascertain
24 what intellectual property rights of Eclipse you were
25 obtaining out of the bankruptcy as opposed to tangible

1 property?

2 A. Well, again looking at the documents from the
3 bankruptcy trustee and what it was they put down there
4 and then later on whatever it was that they handed over,
5 probably getting some lawyer to look at it to sort of
6 go, "What did I just buy, you know?" So --

7 Q. And do you ever recall finding out somebody
8 letting you know what you just bought with regard to
9 intellectual property rights?

10 A. Well, again I don't recall what the opinion
11 was once it came back, but "whatever was in that pool is
12 yours now."

13 Q. Okay.

14 A. And that there was no disputes at that point
15 over anything.

16 Q. And do you recall whether Mr. Fitzgerald
17 forwarded a copy of Exhibit 16 and the attached
18 documents to you?

19 A. I don't recall.

20 Q. Do you ever recall prior to acquiring the
21 rights out of the Eclipse bankruptcy looking at any
22 contracts that might have been in place between Eclipse
23 and Mr. Gaiman?

24 A. No.

25 Q. Do you recall any discussions concerning any

1 such contracts?

2 A. No, because it was -- it was an Eclipse
3 bankruptcy, so it was Eclipse, not specifically for any
4 one character.

5 Q. Okay. You were just getting whatever rights
6 Eclipse had?

7 A. Right.

8 Q. Take a look at Exhibit 52.

9 (Deposition Exhibits Numbers 53 and 54
10 were then marked for identification.)

11 BY MR. ARNTSEN:

12 Q. Did you have a chance to look at Exhibit 52?

13 A. Yes.

14 Q. If you look at the second to last page, page
15 number 1391, is that your signature?

16 A. Yes.

17 Q. Did you direct your attorney to file this
18 trademark application?

19 A. Right.

20 Q. In October of 1997?

21 A. I told him to -- to go and get the paperwork
22 done for a trademark.

23 Q. When did you tell him to do that?

24 A. Probably shortly after my last conversation
25 with Terri Cunningham, which would have been maybe in

1 August, August some time probably, September. Late
2 August, early September.

3 Q. Okay. Did you communicate to Mr. Gaiman in
4 any way that you were going to be doing this?

5 A. No.

6 Q. As far as Mr. Gaiman knew he had the rights
7 to Miracleman, is that right?

8 A. You'd have to ask Mr. Gaiman that question.

9 Q. He didn't know anything to the contrary,
10 right?

11 A. You'd have to ask Neil that question.

12 Q. Why did you ask your lawyer to file the
13 trademark application for Miracleman at this time?

14 A. We were -- we're now at the tail end of some
15 of -- sort of some of these conversations here and again
16 I thought we were -- I thought we were pretty close. I
17 thought we were getting pretty close. We were finally
18 going to get a deal done here.

19 But to get near the finish line made me feel
20 pretty good and given this is August, the movie's coming
21 out, I'm trying to enjoy life. To find out that some of
22 the information that had been a constant source of
23 discussion may not have been completely forthright was
24 becoming wearisome to me, and so again at some point the
25 straw broke the camel's back. Neil in good faith had

1 been receiving moneys trying to get the calculations
2 that we were giving him based on what we thought was
3 truthful information and he had my money and my
4 character and was giving me back something that --
5 essentially something that we had that he had
6 represented that he had which from my perspective he
7 didn't and it was -- I was never going to get money back
8 from Neil. I didn't think that would ever be true. So
9 I had to grab something. The only thing that was still
10 left was I gave him money and Miracleman. The money was
11 gone and so I -- I told him to get Miracleman back.

12 Q. Okay. Because you had obtained your rights
13 from Eclipse to Miracleman, whatever those rights were,
14 in early 1996, correct?

15 A. Well, whenever the auction was held.

16 Q. Okay. Take a look at Exhibit 16.

17 A. Right.

18 Q. But you didn't do anything with regard to
19 registering any intellectual property rights until the
20 fall of 1997, correct?

21 A. I don't know. This is the first time that we
22 did something or later on I know there was a lapse or
23 something they notified me on.

24 Q. What do you recall with regard to that, with
25 regard to the lapse?

1 A. That they -- that they -- well, it's my --
2 Jon is my lawyer.

3 Am I allowed to talk about that?

4 MR. KAHN: This is something Jon told him. I
5 didn't realize that.

6 If you heard something from Jon, your lawyer,
7 then that's covered by privilege. There are documents
8 that we produced and they can answer that.

9 You should not get into any discussions about
10 the documents or the situation that you had with Jon
11 Chick, your attorney. You can talk about discussions
12 you had concerning these matters with non-attorneys, but
13 your discussions with Jon Chick are privileged.

14 THE WITNESS: Okay.

15 BY MR. ARNTSEN:

16 Q. Were all of your discussions concerning the
17 lapse with Attorney Chick?

18 A. Right.

19 Q. Did you have any discussions on that subject
20 with anyone else?

21 A. No.

22 Q. Okay. Take a look at Exhibit 53. Is that
23 your signature on the second to last page?

24 A. Yes.

25 Q. And that's you're signing as to the

1 declarations set forth therein, correct?

2 A. Correct.

3 Q. And you are stating that you're either the
4 owner of the trademark sought to be registered or
5 entitled to use such mark in commerce, correct?

6 A. Right.

7 Q. And what did you do to satisfy yourself that
8 those were true statements?

9 A. Well, again those were discussions with Jon,
10 so --

11 Q. Okay. Anything else other than discussions
12 with your lawyer?

13 A. No.

14 Q. All right. Take a look at Exhibit 54. Is
15 that your signature on the bottom?

16 A. Yes.

17 Q. What prompted you to sign and file this
18 document?

19 MR. KAHN: The same caution, Todd. If what
20 prompted you was a conversation with Jon Chick, you can
21 answer to other things but not to the subject of the
22 conversation with Jon Chick. You can identify Jon Chick
23 as the person that prompted you to do this, but that's
24 all you can say.

25 THE WITNESS: All right. So after

1 discussions with Jon and then this came out of those
2 conversations.

3 BY MR. ARNTSEN:

4 Q. Okay. Anything else other than that?

5 A. No.

6 Q. Let me just take a minute to confirm nobody
7 else has any other questions they want me to ask you,
8 but I am all but done.

9 A. Okay.

10 (Whereupon, a short recess was then had at
11 12:42 p.m. until 12:47 p.m.)

12 BY MR. ARNTSEN:

13 Q. Mr. McFarlane, who at -- do you know anyone
14 at your company, if I wanted to get hold of Allan
15 Inglis, who would, you know, that would know how to do
16 that?

17 A. Possibly Steve Peterson.

18 Q. Is he with the company?

19 A. Yes. He is the new COO.

20 Q. And you can get that from looking at the tax
21 information from 2001, right?

22 A. Yes. And Steve might have a phone number,
23 too.

24 MR. ARNTSEN: Can you get that for me?

25 MR. KAHN: Yes, we can get that.

1 MR. ARNTSEN: Do you recall --

2 MR. KAHN: But just, Allen, so I don't
3 forget, Jeff, if you could just remind me.

4 MR. ARNTSEN: We will. We'll put it in a
5 letter.

6 MR. KAHN: If you put it in a letter, this
7 way I'll --

8 MR. ARNTSEN: I'm with you.

9 MR. KAHN: We know where he is.

10 BY MR. ARNTSEN:

11 Q. Do you recall at a convention panel in 1993
12 saying that you didn't even know there were any other
13 Spawns until Neil told you that?

14 A. I don't recall.

15 Q. Okay. You have no recollection of making
16 such a statement?

17 A. No. I've done a lot of panels.

18 Q. Okay. And then now I'm just waiting for one
19 more exhibit.

20 On at least some of the Spawn comics there's
21 a letter page and letters and answers to letters. Do
22 you know what I'm talking about?

23 A. Yes.

24 Q. And some of the letters are to you and then
25 there would appear -- and then there would be -- strike

1 that. I'll just go at it directly.

2 (Deposition Exhibit Number 55 was then
3 marked for identification.)

4 BY MR. ARNTSEN:

5 Q. I'm going to show you Exhibit 55 and ask you
6 if you can identify that. And I'll represent to you
7 that it is the cover page and then a page of Spawn 11
8 and I've got the original there in front of you.

9 And can you just compare the two and confirm
10 that that's the case?

11 A. Yes.

12 Q. And you see on the second page of Exhibit 55
13 there is a letter saying "Dear Todd" from a Matthew
14 O'Brien?

15 A. Okay.

16 Q. Do you see what I'm referring to?

17 A. Right.

18 Q. And then there's an answer to that letter
19 that starts with "Matthew."

20 A. Right.

21 Q. Did you write that answer?

22 A. Right. Yes, I wrote that.

23 Q. Okay. We're done. Thank you.

24 MR. KAHN: Certainly, I have what I hope will
25 be no more than five to ten minutes of follow-up

1 questions and then we'll be done.

2 EXAMINATION

3 BY MR. KAHN:

4 Q. Todd, yesterday when you were asked about a
5 conversation you had with Terri Cunningham concerning DC
6 Comics contracts and handling of derivative characters,
7 according to my notes you said you thought that
8 conversation took place in 1996. Today is it my
9 understanding you believe that conversation took place
10 in the summer of 1997?

11 A. Right. Yes, 1997.

12 Q. Earlier today Allen showed you several
13 copyright Certificates of Registration for different
14 issues of Spawn and Angela.

15 As an example, let me show you what has been
16 marked as Plaintiffs' Exhibit 37, which references Spawn
17 Issue Number 26.

18 A. Okay.

19 Q. Do you recognize the signature on the second
20 page as being that of Beth Ann, however her last name is
21 pronounced?

22 A. I don't know her signature, but --

23 Q. Okay. So you don't recognize the signature.
24 Do you know who Beth Ann was?

25 A. Yes. She was -- she was an assistant to Paul

1 Burke and did some work maybe for Jon.

2 Q. Where was Beth Ann's office in January of
3 1995, which is the date of Plaintiffs' Exhibit 37?

4 A. The exact office?

5 Q. Was it in Phoenix or was it in Michigan?

6 A. No, it was in the Detroit, Michigan area.

7 Q. Where was your office in 1995?

8 A. In Phoenix, Arizona.

9 Q. Did you review this Certificate of
10 Registration before someone signed it and sent it in on
11 your behalf?

12 A. No.

13 Q. Is the name of the author in paragraph 2 of
14 this registration, namely Todd Dean McFarlane, your
15 understanding of who the copyright owner was?

16 A. No. Like I said, those should have been Todd
17 McFarlane Productions. So, Todd McFarlane, an
18 individual, has never grabbed any of those rights.

19 Q. And did anyone talk to you about why the box
20 under 2 a for contribution to this being a work made for
21 hire, did anyone talk to you about that before that was
22 checked?

23 A. No.

24 Q. Earlier today Mr. Gaiman's attorney showed
25 you a group of scripts and thumbnails marked Plaintiffs'

1 Exhibits 39 through 44 and I'm showing them to you again
2 today now, Todd. I have a question for you about these
3 exhibits, two questions.

4 Do you see on the first page of each of these
5 exhibits there is a stamp that says "Library of
6 Congress, August 3, 2000, Copyright Office"?

7 A. Uh-huh. Yes.

8 Q. And there's also what looks like some sort of
9 product code or registration number.

10 A. A bar code.

11 Q. Correct.

12 To your recollection were these on the copies
13 of the scripts and the thumbnails that were received
14 originally from Neil back at the time that these issues
15 were being created?

16 A. I never -- I don't recall seeing the
17 thumbnails, but on the scripts they were to come in in
18 the mid '90s, so it would be tough to have a 2000 date
19 on a 1995 document.

20 Q. So, do you know where these particular copies
21 of the scripts came from that are bearing these Library
22 of Congress stamps?

23 A. No.

24 MR. KAHN: Could you mark this as the next
25 exhibit?

1 (Deposition Exhibit Number 56 was then
2 marked for identification.)

3 BY MR. KAHN:

4 Q. Todd, take a look at Exhibit 56 which
5 actually consists of several pages stapled together.
6 And once you have taken a look at it, would you -- if
7 you recognize what this is, describe it? What is
8 Exhibit 56?

9 A. It appears to be thirteen pages of various
10 follow-up accounting statements that we would get at
11 Todd McFarlane Productions from Image comic books on
12 various -- various items that we did.

13 Q. Let me ask you to look, for example, at the
14 page about two-thirds of the way through bearing the
15 number PM 1684.

16 A. Okay.

17 Q. Is that a statement you received, you being
18 Todd McFarlane Productions, from Image Comics for Spawn
19 Issue Number 26?

20 A. Right. We'd get a statement like this,
21 right.

22 Q. And what is shown on this statement starting
23 with the first column going down briefly?

24 A. This page is for some accounting for Spawn
25 Issue Number 26 comic book. The first column is a first

1 payment and then the other subsequent columns is for --
2 after that are additional accounting that would apply to
3 this same subject matter, Spawn comic book Number 26.

4 Q. So, for example, the second row in the first
5 column is "Date Shipped 12/27/94." What does that refer
6 to?

7 A. Probably in reference to when the comic book
8 was sent out to Diamond Comics.

9 Q. So the comic book is printed by them and is
10 being sent to the distributor?

11 A. Right.

12 Q. The next --

13 A. Or from the printing plant. It could be from
14 the printing plant.

15 Q. Okay. Then the next line is "Cover Price."
16 That's the cover price on the face of the comic book?

17 A. Yes.

18 Q. Take us very quickly down to the first line
19 that says "Net Cash." What are these other entries?

20 A. From starting with "Total Invoiced"?

21 Q. Right. We don't need to go line by line.

22 A. Right.

23 Q. The next set.

24 A. So, let me -- let me now switch into Todd
25 McFarlane, Image guy.

1 Q. Okay.

2 A. Okay. A shareholder now. My understanding
3 of how all this works.

4 Total Invoiced would be the number of copies
5 that were shipped times whatever percentage of the cover
6 price we would receive. So again if a comic book cost
7 in this case \$1.95, you don't get \$1.95. That's the
8 retail price. We sell it at a wholesale price. And
9 that wholesale price, just for round numbers, is half,
10 is half the cover price to use generic round numbers
11 then. Then that's how you would probably get pretty
12 close to that total invoice.

13 "Less Discounts Taken" is a number I believe
14 that is part of our contract with Diamond Distributors,
15 that depending upon volume of comic books coming from
16 our company and various other companies they get to make
17 these deductions based on what's coming through the
18 pipeline of all the companies and sometimes specifically
19 ours. So that's a -- that's not a in-house deduction.
20 That would actually be something that Diamond comic
21 books would have taken off.

22 We at Image then it appeared would have
23 received the 254,091.01, which is the net revenue to
24 date.

25 And then the "Balance Due" appears to be of

1 what is due to us, they still haven't given all of us.
2 I guess it looks like they need to collect on the
3 35,000. So, I think -- so I think if you added this up
4 to the line above, it says "Net Revenue to Date."

5 And then in the first column it doesn't
6 appear to be any -- although there's one, two, three,
7 four, there's five other lines, there's no deductions or
8 additions there.

9 Q. So you get to "Net Cash" which is the amount
10 of money that Image has collected so far on this comic
11 book?

12 A. Right.

13 Q. And is there -- anything below that down to
14 the line called "Due to Creator" are all the deductions,
15 all the total expenses?

16 A. Right. So -- so, in this example, Image
17 comic books has \$218,000, but Image comic books has
18 fronted and paid the printing bills and all those
19 others. We now have to go back and -- and pay those
20 bills or there's moneys that are due. So that's what
21 all that is.

22 If you go down here, most of that's probably
23 for printing, Ronald's Printing, which is the next line
24 below the first bolded line.

25 Q. Right.

1 A. On this one, this one right here, the
2 headline says "Ronald's Printing." So that's the bulk
3 of it. The other categories are Olyoptics, a little bit
4 of coloring. Studio Color Group is film separations.

5 Q. And we don't need to go line by line. These
6 are the different expenses that Image Comics pays --

7 A. Right.

8 Q. -- in connection with having this issue
9 printed?

10 A. Right.

11 Q. It brings us down to a gross profit number of
12 \$119,406.09.

13 A. Where are you at? Oh, right here. Yes, yes,
14 yes.

15 Q. And then if we keep going down that column
16 there are additional expenses until we come down to a
17 column called "Net Income Before Image's Royalty." Do
18 you see that?

19 A. Yes.

20 Q. And then you talk about this fee. It looks
21 like for this particular issue it was 2,000 plus 2
22 percent?

23 A. Right.

24 Q. That gets deducted from the amount?

25 A. Right. That's Image's overhead fee, right.

1 Q. And then we get a line called "Due to Creator
2 for Book, \$113,278."

3 A. Right.

4 Q. And then we have "First Payment to Creator."
5 That would be the check that would go from Image Comics
6 to Todd McFarlane Productions?

7 A. Right. In this example, right.

8 Q. Is this a document, namely this page and all
9 the other pages, in Plaintiffs' Exhibit 56 that was
10 created in the ordinary course of business by Image
11 Comics?

12 A. Yeah.

13 Q. And it's a document that Todd McFarlane
14 Productions would have received in the ordinary course
15 of business?

16 A. Yes.

17 Q. And for Spawn Issue 26 it shows a shipping
18 date of December 27, 1994. This is the issue that you
19 testified about earlier for which Mr. Gaiman wrote a
20 portion of the script, is that correct?

21 A. Yes. A couple pages, right.

22 Q. And in your testimony yesterday you stated
23 that Mr. Gaiman had told you that he did not want or
24 need to have credit for that portion of the script that
25 he wrote, correct?

1 A. Yes.

2 Q. Between the shipping date of December 27,
3 1994 and the date that this lawsuit was filed, Todd, did
4 Mr. Gaiman ever complain to you about his lack of credit
5 for the portion of the script that he wrote for
6 Issue 26?

7 A. No.

8 Q. And at any time before December 27, 1994 did
9 he complain to you or request credit for the portion of
10 Issue 26 that he wrote?

11 A. No.

12 Q. If you turn to the next page, is this a
13 similar statement from --

14 A. 1685 at the bottom?

15 Q. Yes. Is this a similar Image statement for
16 the first issue of the Angela mini series?

17 A. Yeah. This -- the difference on this one as
18 compared to the prior one is that this would be
19 accounting for first payment only. If there was any
20 moneys due later on and any of the accruals, then those
21 columns begin to get added. As you can see, there's
22 five columns in 1684.

23 Q. Right.

24 A. And there's one column in 1685.

25 Q. My question: On Angela Number 1 it indicates

1 a shipment date of December 20, 1994. Is that
2 consistent with your recollection of when Angela Number
3 1 was published and shipped?

4 A. I can't say for certain either. It's in that
5 area.

6 Q. And December of -- in the December, 1994
7 area?

8 A. Right.

9 Q. And the next page is Angela Number 2, page
10 1686. That shows a shipment date of approximately one
11 month later.

12 A. Right.

13 Q. Angela Number 2. Is that consistent with
14 your recollection of when Angela Issue Number 2 in the
15 mini series was printed and shipped?

16 A. Well, again we try to get books out on a
17 monthly basis, so it would have been a month after or
18 pretty close to a month after Issue 1. So that would be
19 consistent in theory.

20 Q. And then the next one is Angela Number 3.
21 That's page 1687.

22 A. Okay.

23 Q. Is that the Image statement for Angela Number
24 3?

25 A. Right. Or one of them.

1 Q. And that shows a shipping date of
2 approximately one month after Angela Number 2. Is that
3 also consistent with your recollection of the publishing
4 sequence for those three issues in the mini series?

5 A. There appears to be an error. So let's
6 correct an error here, young man.

7 Q. Okay.

8 A. Okay. So, 1685 says that the shipping date,
9 if this is the correct date, is December 20, 1994. So
10 the next one is 1686.

11 If you cross over into a new calendar year
12 somebody should have added that '95 to that since it
13 came out the next year. So somebody didn't have their
14 date right. The year that 1167, it should have been
15 1995 because if you go to page 1687 then we're back to
16 1995. So somebody added a number.

17 Q. So, in the year -- okay. Looking at these
18 statements then, is it your recollection that Angela 1,
19 2 and 3 came out roughly --

20 A. Consecutively.

21 Q. -- in a three month from December of 1994 to
22 February of 1995?

23 A. Correct.

24 Q. Let me have you look at the very last page in
25 this document.

1 What does this page from Image Comics refer
2 to?

3 A. This appears to be some accounting statements
4 for the Angela trade paperback that was published.

5 Q. What was the Angela trade paperback?

6 A. That I think was a collection of at least the
7 Issues 1 through 3 of the Angela mini series. It may
8 contain some additional pages.

9 Q. And does this page of Exhibit 56, namely
10 page -- the final page of this exhibit, show or indicate
11 when the Angela trade paperback was published and
12 shipped?

13 A. It says November 7, 1995.

14 Q. So the three -- at least the three issues of
15 Angela and possibly some additional materials were put
16 together in a trade paperback in the type of final
17 production and published by Image Comics sometime toward
18 the end of 1995?

19 A. Right.

20 MR. KAHN: I have nothing further.

21 RE-EXAMINATION

22 BY MR. ARNTSEN:

23 Q. Just a couple of questions on Exhibit 56.

24 Can you just -- just turn to the last page of
25 Exhibit 56.

1 You see the last four rows talk about amounts
2 due to the creator?

3 A. Right.

4 Q. Who's the creator?

5 A. Within the confines of Image, it's
6 essentially the people who give us the comic book. So
7 it's not specific.

8 It's whoever we owe the cash to is the person
9 that brought us the complete comic book.

10 Q. So, with regard to the Angela trade
11 paperback, who is the creator as shown on the last page
12 of Exhibit 56?

13 A. Those payments would have been made to Todd
14 McFarlane Productions.

15 Q. And would that be true with regard to all of
16 the references to creator on Exhibit 56? Creator is
17 Todd McFarlane Productions?

18 A. Payments, right. The payments would have all
19 gone to Todd McFarlane Productions.

20 Q. Okay. So wherever the word "creator" is used
21 that means Todd McFarlane Productions, correct?

22 A. Correct. Or licensor. In this case Todd
23 McFarlane Productions, right.

24 Q. Okay. That's all. Thanks.

25 MR. LAPPLE: No questions.

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MR. KAHN: We will not waive signature.
(Whereupon, the deposition was then
concluded at 1:20 p.m.)

TODD D.M. McFARLANE

3442-G

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)

4 BE IT KNOWN that the foregoing deposition was
5 taken before me, PAUL GROSSMAN, a Notary Public and
6 Certified Court Reporter #50028 in and for the County of
7 Maricopa, State of Arizona; that the witness before
8 testifying was duly sworn by me to testify to the whole
9 truth; that the witness will read and sign the
10 deposition; that the questions propounded to the witness
11 and the answers of the witness thereto were taken down
12 by me in shorthand and thereafter reduced to print by
13 computer-aided transcription under my direction; that
14 the foregoing 122 pages are a true and correct
15 transcript of all proceedings had upon the taking of
16 said deposition, all done to the best of my skill and
17 ability.

18 I FURTHER CERTIFY that I am in no way related
19 to any of the parties hereto, nor am I in any way
20 interested in the outcome hereof.

21 DATED at Phoenix, Arizona, this 22nd day of
22 June, 2002.



Paul Grossman
Paul Grossman, Notary Public
AZ CCR #50028